(7)

No. 94-1809

Supreme Court, U.S.
FILED
AUG 3 1995
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD. and MATSUSHITA HOLDING CORP.,

Petitioners,

vs.

LAWRENCE EPSTEIN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 3, 1995
CERTIORARI GRANTED JUNE 19, 1995

BEST AVAILABLE COPY

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l. Affidavit of Roger W. Kirby in Support of Plaintiffs' Motion for Summary Judgment and Concerning a Possible Delaware Release, without exhibits, dated December 15, 1990 298

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The following documents have not been reprinted in the Joint Appendix because they appear on the following pages in the Appendix to the Petition for a Writ of Certiorari filed with this Court on May 3, 1995:

Findings of Fact, Conclusions of Law, and Order of the United States District Court for the Central District of California, dated April 15, 1992 ..... Pet. App. 45a

Notice of Pendency of Class Actions, Class Action Determination, Proposed Settlement of Class Actions, Settlement Hearing, Right to Request Exclusion and Right to Appear, dated October 27, 1992 ..... Pet. App. 77a

Memorandum Opinion, Order and Final Judgment of the Delaware Chancery Court in *In re MCA Inc. Shareholders Litigation*, dated February 16 and 22, 1993 ..... Pet. App. 63a

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Order of the United States Court of Appeals for the Ninth Circuit Denying Petition for Rehearing and Rejecting Suggestion for Rehearing In Banc, dated April 6, 1995 ..... Pet. App. 62a

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV90-6451-R

LAWRENCE EPSTEIN, JOHN LINDER, JANE ROCKFORD, AS TRUSTEE OF THE MICHAEL J. ROCKFORD TRUST, MAURICE KARLIN, RUTH KARLIN, BETH ANN KARLIN, BERT P. KARLIN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

MCA, INC., MATSUSHITA ACQUISITION CORPORATION, MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., MATSUSHITA HOLDING CORPORATION, SIDNEY J. SHEINBERG AND LEW R. WASSERMAN,

Defendants.

DOCKET ENTRIES

DATE	NR.	NO.	PROCEEDINGS
12/3/90	jcw	1.	Complt. Issd Summs. DEMAND FOR J/T.
			Case maybe ref'd to Mag King for discov.
12/10/90	esl	2.	ORD(JGD) to reassign case. Case reassign to the cal of Judge REAL for all fur procs. cc ptys Entered on Civil Courtran
12/7/90	lp	3.	Class actn, affidavit of Roger Kirby. pltf

DATE	NR.	NO.	PROCEEDINGS
		4.	Ex Parte applic for ord shortening ti. pltf LODGED ORD F(WD TO CRD)
		5.	Decl of Kaufman in suppt of ex parte. pltf
12/11/90	lp	7.	ORD allowing non-res atty to appear & des Robert H. Rotstein as lcl cnsl. def
		8.	ORD allowing non res atty Dennis Jacobs to appear & des Kay Kochenderfer as lcl cnsl. defts
12/14/90	lp	9.	Recpt for rptrs trnscrpt hrg of 12/11/90 c/r C. Knickerbocker.
12/18/90	lp	10.	Appendix subm unpub case not avail on lexis. defts MCA & Wasserman
		11.	Decl of Chapman in suppt of memo of p&A. defts Matsushita
		12.	Appendix of out of state authority. defts Matsushita
12/17/90	lp	13.	Decl of Kaufmann in suppt fo motn for S/J. pltf
		14.	Affidavit of Roger W. Kirby. pltf
		15.	memo of p&A in supt of motn for S/J. pltf
		16.	Notc of motn & motn for S/J. retnbl 12/28/90 @ 10 am. pltf
		17.	Appendix of unreported cases. pltf

DATE	NR.	NO.	PROCEEDINGS
		18.	Stmt of uncontroverted facts & concl of law. pltf
12/18/90		19.	Memo of P&A in litigation. defts MCA & Wasserman
		20.	Memo of P&A defts Matshushita
		21.	Memo re settlmnt of Delaware actn. pltfs
12/11/90	lp	22.	Suppl memo of p&A in suppt of ex parte applic for ord shortening ti. pltf
		23.	Joint memo of p&A in opp to ex parte. deft Matsushita
12/20/90	lp	24.	Decl of Jane Rockford in suppt of motn for S/J. pltf
		25.	Affidavit of Linder insuppt of-motnfor S/J. pltf
		26.	Decl of Karlin in suppt of motn for S/J. pltf
		27.	Decl of Karlin in suppt of motn for S/J. pltf
12/26/90	lp	28.	ANSWER to 1st A/C. deft MCA Inc & Wasserman
		29.	Notc of motn & motn to dism complt. defts MCA & Wasserman
12/20/90	lp	30.	Decl of Karlin in suppt of motn for S/J. pltf
		31.	Decl of Squire in suppt of motn for S/J. pltf

DATE	NR.	NO.	PROCEEDINGS
		32.	Decl of Karlin in suppt of motn for S/J. pltf
		33.	Reply memo of p&A in suppt of motn for S/J. pltf
12/27/90	lp	34.	Sur reply memo in suppt of motn for S/J. pltf
12/26/90		35.	Affidavit of Walter J. Minton.
		36.	Joinder in motn for S/J. pltf
12/27/90	lp	37.	ORD pltf shall promptly sver & file P/S.
		38.	Appendix of unreported authority subm in suppt of memo of P&A defts Matsushita Acquisition Corp. & Matsushita Holding Corp.
		39.	Decl of Edwards in suppt of opp to S/J motn & in suppt of motn to dism. defts Matsushita Acquisition Corp & Matsushita Holding
12/19/90	lp	40.	Decl of Hallam in suppt of memo of P&A re effect of class settlement defts MCA & Lew Wasserman
		41.	Notc of erratum. defts Matsushita Acquisition & Holding
		42.	Decl of Roddy in suppt of memo re settlmnt of consolidated actn pltfs for Delaware
12/27/90	lp	43.	Decl of Chapman in suppt of memo of p&A in opp to motn for S/J defts Matshushita Acquisition & Holding

DATE	NR.	NO.	PROCEEDINGS
		44.	Evidentiary objs. defts Matsushita Acquisiton & Holding
		45	Memo of p&A in opp to motn for S/J. defts Matsushita Acquisition
		46.	Opp to stmt of uncontroverted facts & stmt of gen issues. defts Matsushita Acquisition & Holding Corp.
		47.	Cert of svc, P/S of memo of P&A svd Kaufmann, Malchman, Greenberg & Ostrager by fed express & messenger & US Mail on 12/27/90 defts MCA & Wasserman.
		48.	Memo of p&A in opp to motn for S/J. defts MCA & Wasserman
12/27/90	lp	49.	Stmt of gen iss of material fact in response to stmt of uncontroverted facts. deft MCA & Wasserman
		50.	Appendix of decls. defts MCA & Wasserman
		51.	Appendix of unofficially reported or unreported authorities relied upon in opp to motn for S/J. defts MCA & Wasserman
12/28/90	lp	52.	ORD allowing non-res atty Paul Rowe to appear & des Robert H. Rotstein as lcl cnsl.
12/8/90	lp	53.	ORD allowing non-res atty Mary Kay Vyskocil to appear.
12/28/90	lp	54.	ORD allowing non-res atty Barry R. Ostrager to appear.

DATE	NR.	NO.	PROCEEDINGS
		55.	ORD allowing non-res atty Herbert M. Wachtell to appear.
		56.	Decl of James F. Shea. defts
		57.	Decl of Kaoru Takada. defts
1/2/91	lp	58.	ANSWER to First A/C. defts Matshushita Acquisition Corp & Matsushita Holding Corp
12/28/90	lp	59.	Hrg on pltfs motn for S/J joinders by J.Linder, J. Rockford M. Karlin R. Karlin B. Karlin & Bert Karlin denied as to cause of actn, ORD to prep ord/jdmt/findings. M.O. c/r V. Moran
1/7/91	lp	60.	Decl of Ernest Kaufmann. pltf
		61.	Stip & ORD cont hrg on motn to dism complt to 2/19/91 @ 10 am
12/17/90	lp	62.	Retn of orig sms& P/S of S/C svd Maureen Angelinetta for MCA Inc on 12/5/90 @ 9:06 am. pltfs
		63.	Affidavit p/S of s/c svd Ms. Ellen L. Kinsler for Matsushita Holding Corp on 12/10/90 @ 1:40 PM. pltfs
		64.	P/S of S/C svd Isabell Monroe for Matshushita Electric Industrial Co Ltd. pltfs
1/23/91	rm	65.	Affid of James P. Carroll, LR re proof of srv of S/C on Akiya Imura upon Miriam Ramos on 12/27/90 by pers srv. And proof of srv of A/C on Akiya Imura on 12/31/90 by cert mail. pltf

DATE	NR.	NO.	PROCEEDINGS
2/1/91	rm	66.	Declar of George M. Garvey re req for cont of hrg on mot to dism defts MCA, Inc. & Lew Wasserman
2/1/91	rm	67.	Stip & ORD (LEW) pltf's mot for part S/J cont'd to 3/18/91 10am. Opp papers shall be fi nlt 2/26/91; reply be fi nlt 3/11/91.
2/25/91	dc	68.	Decl of G.M. Garvey re req fr cont of hrg on mot to dism. deft
2/27/91	jcw	69.	Notc of x-mot And x-mot for lv to fi 2nd A/C, retnbl 3/18/91, 10a.m. pltfs LODGED PROP ORD (FW'D TO CRD) LODGED PROP 2nd A/C (FW'D TO CRD)
		70.	Appendix of unreported or unofficially reptd auths relied upon in suppt of pltf's oppos to deft Wasserman's Mot to dsms. Pltf
		71.	Declar of Peter S. Linden in suppt of Pltf's oppos to deft Wasserman's mot to dsms and in suppt of pltf's x-mot for lv to fi a sec A/C. pltf
		72.	Memo of p/a in oppos to deft Wasserman's mot to dsms and in suppt of pltfl's x-mot for lv to fi a sec A/C. pltf
3/1/91	gk	73.	MO: OSC re dismissal on 4/1/91 @ 11:00 am, to show cause why this actn should not be dismissed. C/R n/a.

DATE	NR.	NO.	PROCEEDINGS
2/28/91	bg	74.	Stip & ORD tht the mot of deft Lew R. Wasserman to dism the first a/c, currently sch for hrg on 2-19-91, 10:00am. be cont to 4-1-91, 10:00am. Opposing papers shall be fi & svd on 3-12-91 & reply papers shall be fi & svd on 3-25-91.
3/7/91	js	75.	Reqst to ent dflt. pltf
	js	76.	Declar of Ernest Kaufmann, re reqst to ent dflt. pltf
	js	77.	DEFLT BY CLERK to deft Matsushita Electric Industrial Co Ltd
03/11/91	r/s	78.	Memo P/A suppt motn class cert. pltf
		79.	Notc motn & motn class cert, rtbl 04-01-91, @ 10:00 AM. pltf LODGED Ord, (Fwd to CRD)
03/12/91	r/s	80.	ORDER allow apprnc non res atty Jeffrey H. Squire, by designatn of Ernest T. Kaufmann pltf
		81.	ORDER allow apprnc non res atty Roger W. Kirby by desig Ernest T. Kaufmann. pltf
03/18/91	r/s	82.	Joindr of dfts to motn class cert. dft MCA, Inc. & L.R. Wasserman
		83.	Memo P/A suppt opp ent dflt jdgmnt. dft Matsushita Electric
		84.	Dclar Brian L. Edwards suppt memo P/A. dft

DATE	NR.	NO.	PROCEEDINGS
		85.	Memo P/A opp motn class cert. dfts
03/19/91	r/s	86.	Dclar Miriam Ramos. dfts
		87.	Dclar Isabel Munro. dfts
		88.	Dclar Isabel Munro. dfts
		89.	Dclar Miriam Ramos. dfts
		90.	Dclar Isabel Munro. dfts
		91.	Dclar Isabel Munro. dfts
		92.	Dclar Miriam Ramos. dfts
		93.	Dclar Miriam Ramos. dfts
03/21/91	r/s	94.	Jnt rpt earl meet cnsl. pltf
03/25/91	r/s	95.	Rply memo suppt motn to Dism Complt. dfts
		96.	Rply memo P/A suppt motn class cert. pltf
03/28/91	r/s	97.	Stip & Order the req ent dflt is W/drawn, any dflt ent agnst MEI is set aside, & MEI shall hve 20 dys to fi answ.
4/1/91	dc	98.	MO:mot to dism is grantd w/20 days lv to amd. den mot fr class cert w/o prej.(GH)
4/—/91		99.	ANSWER to 1st A/C., dft. Matsushita Electric Industrial Co., Ltd.
4/22/91	r/s	100.	2nd A/C; dmnd j/t., pltfs ISSD smms on 2nd A/C.
04/23/91	r/s	101.	Stip & Order re: cnsolidatn of rlated cases & fi cnsolidatd amd Complt by 04-22-91.
04/26/91	r/s	102.	Notc depo Creative Artists agency.

DATE	NR.	NO.	PROCEEDINGS
			Inc. 05-10-91. pltf issd Subp.
		103.	Notc of Decision. pltfs
05/08/91	r/s	104.	Dclar George M. Garvey. dfts
05/09/91	r/s	105.	Stip & Order all dfts hve to/incl 05-20-91 to answ A/C; cnsl for dft Sidney Sheinberg hve accptd srvc of A/C.
05/21/91	r/s	106.	ANSWER to consolidated A/C. dfts Matshushita Acquisition Corp., Matshushita Holding Corporation, and Matshushita Electric Co., amd.
05/20/91	r/s	107.	Notc depo Creative Artists Agency., Inc. by Michael Ovitz on 07-01-91. pltfs Issd Subp.
		108.	Dclar Robert H. Rotstein. dfts
05/24/91	r/s	109.	Notc of PTC 07-29-91, @ 11:00 AM, Crtrm 8.; memo cntntns fact & law shall be fi/srvd by 07-08-91; PTC shall lodge by 07-22-91; trl dte set 08-27-91, @ 09:00 AM.
		110.	Notc of Motn & motn to Dism., rtbl 07-01-91, @ 10:00 AM. dfts
05/29/91	r/s	111.	Stip & order dfts MCA INC., Lew R. Wasserman & Sidney J. Sheinberg hve to/incl 05-24-91 to answ A/C.
		112.	Notc change dte for hrng motn dism, rtbl 07-01-91, 10AM., dfts
		113.	Correctn to Notc of Motn & motn Dism. dft
06/11/91	r/s	114.	P/S of Notc of Motn to dism. dfts

DATE	NR.	NO.	PROCEEDINGS
06/07/91	r/s	115.	Notc of Motn & motn Dism, rtbl 07-01-91, @ 10:00AM. dfts
06/11/91	r/s	116.	Ord allow apprnc non-res atty Robert J. Bennett by desig Lawrence M. Berman. pltf
06/13/91	r/s	117.	Notc of erratum re memo P/A suppt motn dism. dfts
06/14/91	r/s	118.	Ex-Prte Applic for Ord cont hrng defts motns. pltf LODGED Ord.
		119.	Dclar Ernest T. Kaufmann suppt exprte applic cont hrng dft motn pltf.
		120.	Dclar Roger W. Kirby suppt exprte applic. pltf
		121.	Memo opp exprte applic for ord cont hrng dft motns. dfts
		122.	Dclar Robert H. Rotstein suppt memo opp exprte applic. dfts
		123.	Memo P/A opp exprte applic for Ord cont hrng defts motns. dfts
6/18/91	jcw	124.	Declar of Theodore N. Mirvis in oppos to pltfs' Ex parte applic. defts
		125.	Suppl declar of Robert S. Chapman in suppt of oppos to pltf's ex parte applic for ord cont hrg on defts' mots. defts
6/19/91	jcw	126.	Declar of Paul Curnin concerning the availability of Matsushita wits. defts
6/19/91			PLACED IN FILE NOT USED ord granting pltfs' ex parte applic.

DATE	NR.	NO.	PROCEEDINGS
6/24/91	jcw	127.	Appendix of unreported or unofficially reported auths in suppt of pltf's memo of p/a in oppos to the mots by all defts dsms all or portions of the complt. pltfs
6/21/91		128.	Memo of p/a in oppos to mot of MCA, Inc, Lew Wasserman, et al. to dsms compl.t pltf W. Minton
6/18/91	esl	129.	MO: C/R-Edith Schwartz HRG pltf's ex parte applic to cont hrg on mot to dism. Denied as to cause of actn w/ or w/o prej & to be personally srvd. Set fur hrg on 6-19-91 re depos U.S.A./Japan
6/19/91	esl	130.	MO:C/R-Schwartz. HRG: fur hrg re pltf's ex parte to cont hrg on mots to dism; stat of depos USA/Japan. Declr not satisfactory; Depo Herrata due 6-24-91, 9AM. in pltf's office; Taka on 7-9-91, 9AM. pltf's off opp due 6-20-91; svc Saturday; reply 6-25-91.
6/25/91	gk	131.	Reply memo of p's & a's in suppt of motn of Defts Wasserman and Sheinberg to dismiss pltfs' complt. Defts MCA Inc., Lew R. Wasserman and Sidney J. Sheinberg
6/25/91	gk	132.	Reply memo of p's & a's in fur suppt of Matsushita Defts' motn to dismiss. Defts, Matsushita Acquisition Corp., Matsushita Electric Industrial Co., Ltd. and Matsushita Holding Corp.

DATE	NR.	NO.	PROCEEDINGS
6/28/91	esl	133.	Receipt for Reptr's transc had on 6-19-91. Fld orig reptr's transc procdngs had on 6-19-91.
		134.	Receipt for Reptr's transc had on 6-18-91. Fld orig reptr's transc procdngs had on 6-18-91.
6/27/91	esl	135.	ORD on oSC re dismissal; consolidation of cases for trial CV90-6451 R & CV91-0336 R (Gx) was hld on 4-29-91.
7/5/91	mc	136.	Expart Appli to Continue Pre-Trial & Trial Dates - Pltfs.
7/5/91	mc	137.	Decl of Ernest T. Kaufmann in Support of Expart Appli to Continue Pre-Trial & Trial Dates - Pltfs.
7/5/91	mc	138.	Objections to Proposed Ord Granting Motns to Dismiss - Pltf.
7/3/91	mc		LODGED Order Granting Motns to Dismiss - Defts.
7/1/91	mc	139.	MO: Motn to Dismiss - Crt ords motns: granted as to cause of action above motns; no private right action; & dismiss w/predj; ords pltf to prepare ord/judgt/findings. (C/R jc)
07/11/91	r/s	140.	Rspnse to objectns to prop[illegible]d to objectns to form. dfts
07/09/91	r/s	141.	Opp to exprte applic to cont PT trl dtes. dfts

DATE	NR.	NO.	PROCEEDINGS
		142.	Dclar Ernest T. Kaufmann suppt objectns to form. pltf
		143.	Objectns to form of ord propsd by Matsushita dfts.pltf
		144.	Rspnse to exprte applic to cont. dfts
		145.	Rspnse to objectns to propsd Ord. dfts
06/24/91	r/s	146.	Memo P/A opp motns to dism. pltfs FILED UNDER SEAL.
		147.	Dclar Roger W. Kirby. pltfs FILED UNDER SEAL.
08/01/91	r/s	148.	Notc depo Price Waterhouse 08-26-91. pltf
08/09/91	r/s	149.	Notc depo David Geffen 08-26-91. pltf Issd 01 subp.
08/12/91	r/s	150.	Dclar Ernest T. Kaufmann suppt motn class cert. pltf
		151.	Appendix unreported cases relied upon suppt motn class cert. pltf
		152.	Memo P/A suppt motn class cert. pltf
		153.	Notc motn & motn class cert. rtbl 09-03-91, @ 10:00 AM. pltf. LODGED ord, (Fwd to CRD)
08/13/91	r/s	154.	ORDER the Complts in the cnsolidated case, DISM w/out lv to Amd; Jdgmnt may ent dism actns w/prej; this ord does not dism claims alleged agnst dfts Matsushita under Sect 10(b), 14(d) and 14(e) of

DATE	NR.	NO.	PROCEEDINGS
			Securities Exchange Act of 1934 and Rule 14d-10 to promulgated thereunder., [Ent 08-14-91]
		155.	ORDER pltf exprte applic GRANTED; PTC cont 09-16-91, @ 11:00 AM;
08/20/91	r/s	156.	Memo P/A opp motn class cert. dfts
08/23/91	r/s	157.	Objectns to form jdgmnt propsd by Matsushita. pltfs
08/26/91	r/s	158.	Memo cntntns law/fact. pltf
		159.	Notc of lodging depo. pltf LODGED depo.
		160.	Wit list. pltf
		161.	Exhib list. pltf
		162.	Memo cntntns law/fact . pltf
08/27/91	r/s	163.	Memo cntntns fact/law. dfts
		164.	Jnt exhib list. dfts
		165.	Wit list. dft
		166.	Wit list. pltf W. Minton
		167.	Dclar Kaufmann suppt motn class cert. pltf
08/27/91	r/s	168.	Rply memo P/A suppt motn class cert. pltf
08/27/91	r/s		fndgs re jdgmnt purs to FRCP 54(b). defts PLACED IN FI NOT USED. jdgmnt PLACED IN FI NOT USED.

DATE	NR.	NO.	PROCEEDINGS
08/29/91	r/s	169.	Notc errata re opp class cert motn. dfts
08/30/91	r/s	170.	Ex-prte applic to cont PTC. dfts LODGED Ord, to CRD
09/04/91	r/s	XX	Ord certifyng pltf class PLACED IN FI NOT USED.
09/03/91	r/s	171.	MO: pltf motn class dert DENIED. George Haas
09/04/91	r/s	XX	propsd ord cont PTC. dft PLACED IN FI NOT USED.
09/06/91	r/s	172.	MO: PTC cont 10-15-91, ,, n/r
		173.	ORDER DENYING motn for class cert. dfts
09/16/91	r/s	174.	objectns to form of ord propsd by Matsushita dfts.pltfs
09/23/91	r/s	175.	Notc of Motn & motn for S/Adjudicatn iss's, rtbl 10-15-91, @ 10:00 AM., pltf LODGED-stmnt & S/J, to CRD
		176.	Memo P/A suppt motn S/J. pltf
		177.	Dclar Peter R. Dion Kindem suppt motn S/J. pltf
10/01/91	r/s	178.	MO: all motns and PTC cald for 10-15-91 are cont 10-24-91., n/r
		179.	Appendix of unofficially rptd authority & SEC rleases in opp motn S/adjudicatn. dfts
		180.	Dclar Brian L. Edwards & req judicl Notc suppt opp pltf motn S/adjudic. dfts

DATE	NR.	NO.	PROCEEDINGS
10/02/91	r/s	181.	Dclar Paul C. Curnin opp pltf motn S/adjudic. dfts
10/04/91	r/s	182.	Rply memo P/A suppt motn S/adjudicatn iss's. pltf
10/07/91	r/s	183.	Rply memo P/A suppt joindr motn S/adjudic iss's. pltfs
		184.	Joindr of class pltfs in motn S/adjudic iss's. pltfs
10/11/91	r/s	185.	Notc of Motn & motn cmpl dosc, rtbl 11-04-91, @ 10:00 AM. dft
		186.	Stmnt purs LR 7.15.2. dfts
		187.	Notc of Motn & motn for lv to fi 2nd A/C. pltfs LODGED Ord to CRD.
		188.	Memo P/A suppt motn lv to fi 2nd A/C. pltf
		189.	MO: motns & PTC cont to 11-04-91, @ 11:00 AM. n/r
		190.	Dclar Mary Kay Vyskocil. dfts
10/15/91	r/s	191.	Notc of Motn & motn for S/J., rtbl 11-04-91, @ 10:00 AM. dfts
			LODGED stmnt & jdgmnt to CRD.
10/17/91	r/s	192.	Dclar Ernest T. Kaufmann suppt ex-prte applic cont hrng certain motns of Matsushita dfts. pltfs
		193.	Exprte applic to cont hrng on certain motns Matsushita dfts. pltfs LODGED Ord to CRD.

DATE	NR.	NO.	PROCEEDINGS
10/18/91	r/s	194.	Memo P/A opp pltf exprte applic. dfts
		195.	Dclar Nancy L. Luis. dfts
		196.	Dclar Gerald L. Sauer. dfts
10/21/91	r/s	197.	Stmnt gen iss opp motn S/J. pltf
		198.	Dclar Peter R. Dion Kindem opp motn S/J. pltf
		199.	Memo P/A opp motn S/J. pltf
		200.	Dclar Walter Minton opp motn S/J. pltf
		201.	Objectns to dclar Gerald L. Sauer and exhibs suppt motn S/J., pltf
10/22/91	r/s	202.	Dclar Peter S. Linden opp dft motn S/J. pltf FILED UNDER SEAL
10/17/91	r/s	203.	ORDER exprte applic cont hrng motns DENIED. pltfs
10/21/91	r/s	204.	Dclar Mary Kay Vyskocil. dfts
		205.	Dlcar Gerald L. Sauer. dfts
10/22/91	r/s	206.	Dclar Peter S. Linden opp motn cmpl disc. pltf
		207.	Appendix unreptd authorities opp motn S/J. pltf
		208.	Memo P/A opp motn S/J. pltf
		209.	Opp stmnt uncntrovrtd facts & stmnts gen iss opp motn S/J. pltf
		210.	Memo P/A opp motn cmpl disc. pltf

DATE	NR.	NO.	PROCEEDINGS
10/24/91	dc	211.	Notc of errata re deft memo P&A in opp to pltf mot fr lv to fi 2nd consolid a/c. defts
10/25/91	dc	212.	Decl of Gerald L. Sauer re lodging of excerpts frm depo transcrpts of Pamela Seymon Esq & Martin Lipton Esq in suppt of Matsushita defts' mot fr s/j deft
10/28/91	dc	213.	Proof of svc of pltf cross mot & cross mot to strike hearsay portns of defts' mot fr s/j & relatd docs;svd on attchd svc list on 10-23-9l.pltfs
		214.	Repl memo P&A in suppt. of mot fr lv to fi 2nd consolid a/c.pltfs
		215.	First and joint exh list.defts
		216.	Decl of Peter S. Linden in suppt of class pltfs' mot fr lv to fi 2nd consolid a/c.pltfs
		217.	Objs to the graphic material subm by the Matsushita defts. pltf Minton.
		218.	Decl of Brian L. Edwards in suppt of Matshushita mot to compel discov. defts
		219.	Memo P&A in suppt of mot to strike pltf repl memo in suppt of jndr. defts
		220.	Repl memo P&A in suppt of mot to compel discov & to strike pltf memo in opp. Matshsuita defts
		221.	Repl memo P&A in suppt of deft mot fr s/j.Matsushita defts.

DATE	NR.	NO.	PROCEEDINGS
10/29/91	dc	222.	Notc of tkng mot fr lv to fi 2nd amd consolidt cmplt off cal.pltf.
		223.	Decl of E.T. Kaufmann in suppt of pltf suppl memo. pltf
		224.	Suppl memo in opp to deft mot to compel discov.pltf
		225.	Decl of E.T. Kaufmann re lodgng of excerpts frm depo transcrpt of Martin Lipton Esq in opp to Matsushita defts' mot fr s/j. pltf
10/25/91	esl	226.	Notc of mot & mot of David Geffen for a protective ord, to quash subpoena & for sanctions, retbl 11-18-91, 10AM. Non-pty Geffen
			LODGED prop ORD. (Fwd'd to CRD)
10/29/91	esl	227.	Declr of Paul C. Curnin. defts
		228.	Separately stated objections to pltfs' exhibits. defts
		229.	Notc of errata re reply memo of P/A of defts in supprt of defts' mot for S/J. defts
11/1/91	ca	230.	Memo in connection with pltfs notc of w/drawal of motn for lv to file a consolidated amended complt & in connection with pltf Minton's notc of flg of related case. defts.
11/4/91	ca	231.	Corrected version of memo in connection with Pltfs notc of w/drawal of motn for lv to file a consolidated amended complt & in connection with pltf Minton's notc of flg of related case. dfts

DATE	NR.	NO.	PROCEEDINGS
11/1/91	ca	232.	Obj's to defts Graphics. pltfs.
11/5/91	tlt		PIFNU prop final ord grntng motn S/J, stmnt uncntrovrtd facts/cnclus law,dfts stmnt uncntrovrtd facts cnclusns law, Ord grntng pltf x-motn strike hearsay prots dfts motn S/J. pltfs
10/31/91	ca	233.	Obj's to graphic evid. dfts
10/25/91	r/s	234.	Jnt stip to cmpl David Geffen testify at depo, prod docs & for snctns; etc.
		235.	Notc of motn & motn to cmpl David Geffen appr tstify at depo, pltf LODGED Ord, to CRD.,
10/28/91	r/s	236.	P/S of x-motn, etc. pltfs
11/12/91	r/s	237.	Suppl memo suppt motn cmpl tstmny at depo. pltfs
11/04/91	r/s	238.	MO: Epsteins motn lv w/d; Mintion's motn S/J DENIED; Matsushita motn S/J DENIED; Matsushita motn cmpl GRANTED, excpt #3 and part of #2 limited to past taxes for 5 yrs. Lois Anderson.
11/13/91	r/s	239.	correctd pages 10 and 12 of Notc motn & motn protect ord. dfts.
11/15/91	r/s	240.	Notc of Motn & motn for Protect Ofd, rtbl 12-09-91, @ 10:00 AM, dfts
		241.	Dclar Mary Kay Vyskocil suppt motn protect Ord. dfts
		242.	P/S for Notc of Motn protect Ord. dfts

DATE	NR.	NO.	PROCEEDINGS
		243.	P/S for dclar Mary Kay Vyskocil. dfts
11/18/91	r/s	244.	MO: D. Geffens motn protect Ord to quash subp & for snctns: Crt Ords Geffen to appr for two hrs on dte to be set by ptys, C/R Julie Churchill
11/19/91	rm	245.	ORD Geffen s/appear & testify at ddpos to be tkn by pltfs on a date agreed 30 days of this ord, tkn at offices of pltfs cns & shall not exceed 2 hrs. Geffen s/produce nlt 10 days prior to depos the docs, papers & things described in the subp d/t; the x-mot of Geffen for a protective rod, to quash the subp srvd on him for sanctions is DENIED.
11/19/91			--PIFNU Prop ord granting mot of D. Geffen for a protective ord, to quash subp & for sanctions.
11/22/91	r/s		PLACED IN FI NOT USED - Ord grntng S/adjudic iss's. pltf
		246.	Notc of Motn & motn for lv to fi 2nd A/C, rtbl 12-16-91, @ 10:00 AM. pltfs LODGED Ord & 2nd A/C to CRD.
		247.	Memo P/A suppt motn lv to fi 2nd A/C. pltf
		248.	Memo opp motn protect Ord re Ohashi & suppt x-motn strike. pltf

DATE	NR.	NO.	PROCEEDINGS
		249.	Dclar Roger W. Kirby opp motn protect Ord . pltf
11/25/91	r/s	250.	Notc of motn & motn cmpl disc, rtbl 12-16-91, @ 10:00 AM. dft
		251.	Dclar Joseph M. McLaughlin. dfts
		252.	Dclar Barry R. Ostrager. dfts
		253.	Ex-Prte Applic for ord short ti for Notc of Motn for Ord enjoin pltfs frm cmmencing furth lawsuits arisng out of MCA Acquisitn w/out lv of crt. dfts LODGED Ord to CRD.
		254.	Notc of Motn for entempt Ord & snctns. rtbl 12-16-91, @ 10:AM, dfts LODGED Ord to CRD.
		255.	Dclar Paul C. Curnin suppt motn contempt Ord & snctns. dfts
		256.	Ex-Prte Applic for Ord short ti for Notc motn cntmpt Ord & snctns. dfts LODGED Ord to CRD.
		257.	Memo suppt motn Ord enjoin pltfs. dfts
		258.	Notc of Motn Ord enjoin pltf cmmencng furth lawsuits MCA w/out lv of crt, rtbl 12-16-91, @ 10:AM. dfts LODGED Ord to CRD.
10/31/91	r/s	259.	Notc of fi of rlatd case. pltf

DATE	NR.	NO.	PROCEEDINGS
11/27/91	r/s	260.	Ex-Prte ORDER Matsushita dfts motn for cntempt Ord & for snctns shall be hrd 12-09-91, @ 10:00 AM, Crtrm 8; Furth Ord pltf hve to/incl 05:00 PM 12-02-91 to fi/srv pprs opp to motn; Matsushita dfts hve up to/incl 12-06-91, @ 05:00 PM to fi/srv rply pprs; all opp & rply pprs shall be srvd pers serv on dte they fi. dft
		261.	Ex-Prte ORDER Matsushita dfts motn for Ord enjoin pltfs & their cnsl frm Commencing Furth Law-suits arisng out of the MCA Ac-quisition w/out lv of crt shall be hrd 12-09-91, @ 10:00 AM, Crtrm 8; pltfs shall hve to/incl 05:00 PM 12-02-91 to fi/srv opp to motn;dfts 05:00 PM 12-06-91 fi/srv rply. dfts
12/02/91	r/s	262.	Memo P/A opp motn citation of cntempt & snctns . pltf
		263.	Appendix unrptd unofficially rptd cases rlied upon in opp to motn en-join pltfs & their cnsl furth law-suits., etc. pltf
		264.	Memo P/A opp, applic Ord enjoin-ing pltfs frm commencing furth law-suits., etc. pltf
		265.	Memo opp dfts motn seekng cmpl addtl disc. pltf
		266.	Dclar Peter S. Linden opp motn seekng cmpl addtl disc. pltf

DATE	NR.	NO.	PROCEEDINGS
		267.	Dclar Peter S. Linden opp motn ci-tation entempt & snctns. pltfs
12/05/91	r/s	268.	Dclar Ernest T. Kaufmann opp motn protect Ord re depo Ohashi., pltf
12/03/91	r/s	269.	Dclar Barry R. Ostrager opp motn lv to Amd & for snctns . dfts
12/02/91	r/s	270.	Rply memo suppt motn protect Ord. dfts
		271.	Memo P/A opp motn lv to fi 2nd A/C. dfts
12/06/91	r/s	272.	Memo P/A suppt motn fi A/C. pltf
		273.	Notc of Motn & motn for Ord grntng lv to fi 1st A/C, rtbl 01-06-91, @ 10:00 AM. pltf LODGED Ord & A/C to CRD.
		274.	Dclar Peter R. Dion Kindem suppt motn. pltf
		275.	Rply memo suppt motn for cntempt ord & snctns. dfts
		276.	Stip & Protect Ord.
		277.	Rply memodfts suppt motn Ord en-joing pltf. dfts
		278.	Rply memo P/A suppt motn cmpl disc. dfts place in fi not used - ex-prte Ord short ti for notc motn cntempt place in fi not used - propsd exprte Ord short ti for Notc of Motn for Ord enjoining pltfs. dfts
12/09/91	r/s	279.	Dclar Paul C. Curnin suppt motn cntempt Ord snctns. dfts

DATE	NR.	NO.	PROCEEDINGS
		280.	Dclar Paul Curnin suppt motn cmpl disc. dfts
		281.	Rply emmo P/A suppt motn lv fi A/C. pltf
		282.	Dclar Roger W. Kirby suppt motn lv to fi A/C. pltf
		283.	Appendix unrprtd cases. pltf
12/09/91	r/s	284.	MO: Matsushita motn enjoining pltfs & cnsl frm commencing lawsuits re MCA acquisition GRANTED; depo of Masao Ohashi to be tkn in Japan; motn for contempt Ord & snctns cont 01-13-92; pltf cnsl Ord prod inventry of req by 12-17., Verna Moron
12/11/91	r/s	285.	Objectns to form of Ord propsd by Matsushita dfts. pltf
12/10/91	r/s		place in fi not used - propsd cntmpt Ord & for snctns. dfts
12/16/91	r/s	286.	MO: pltf motn lv to fi 2nd A/C DENIED; Matsushita motn cmpl disc GRANTED. Richard Fischer place in fi not used - Ord grntng lv to fi 2nd A/C.
12/17/91	r/s	287.	Dclar Ernest T. Kaufmann re inventory of docs prod by dfts. pltf FILED UNDER SEAL.
12/17/91	r/s	288.	ORDER dfts motn cmpl disc GRANTED; the Matshushita dfts shall rcovr atty fees & costs incurred in mkng this motn. place in fi not used - 2nd cnsolidatd A/C; dmnd j/t. pltf

DATE	NR.	NO.	PROCEEDINGS
		289.	Rspnse to objectns to form of Ord enjoin. dfts
		290.	Notc of Motn & motn for Ord cnsolidatng case. rtbl on 01-21-92, @ 10:00 AM. pltf
12/23/91	esl	291.	Declr of Barry R. Ostrager in opp to pltf's mot for lv to amend & for sanctions. defts
12/18/91	esl	292.	Objections of pltf to prop Ord enjoining pltfs & their cnsl frm commencing fur lawsuits arising out of the MCA Acquisition w/o lv of crt. pltf
12/19/91	esl	293.	Objections to form of revised Ord prop. pltfs
12/18/91	esl	294.	Objections of pltf to prop Ord denying Epstein pltfs' mot for for lv to amend complt. pltf
12/20/91	esl	295.	MO:(n/r) This case has been reset for PTC on 1-27-92, 11AM. & trial on 2-11-92, 9AM. Memo of contentions of fact & law shall be fld & srvd on or bef 1-6-92; PTC Ord shall be lodged w/ the Crt on or bef 1-21-92.
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12/23/91	esl	296.	MO:(n/R) Crt ORD tht on the crt's own mot the scheduled for hrg on the cal of this Crt on 1-6-92 is cont'd to 1-13-92, 10AM. NOTE: replies due 12-30-91, no extensions.
12/24/91	esl	297.	Notc of mot & mot of pltfs for voluntary dismssl w/ prej; memo in supprt of mot for voluntary dismssl w/ prej, retbl 1-13-92, 10AM. pltfs

DATE	NR.	NO.	PROCEEDINGS
		298.	Declr of Irving Malchman in supprt of Karlin pltfs' mot for voluntary dismssl w/prej. ptlfs.
12/26/91	tlt		PIFNU Ord enjoining pltf frm commencing further lawsuits arising out of the MCA acquistion w/o further leave of crt. pltf
12/30/91	jcw	299.	Memo of p/a in resp to mot of pltfs for vol dmsl w/prej. deft
		300.	Declar of Mary Kay Vyskocil in resp to mot of pltfs for vol dsmsl w/prej. defts
		301.	Reply memo of p/a in suppt of pltf Walter Minton's mot to fi 1st A/C. Pltf
		302.	Declar of Peter S. Linden in suppt of pltfs' mot to compel discovery. pltfs
		303.	Jnt statemnt purs to L.R. 7.15.2 re mot of pltfs to compel discovery. pltfs
			LODGED PROP ORD. (FW'D TO CRD)
		304.	Notc of mot and mot for Ord compelling discov, retbl 1/13/92, 10a.m. Pltfs
01/06/92	r/s	305.	Suppl dclar Ernest T. Kaufmann re:. inventory docs produced to Matsushita dfts. pltfs FILED UNDER SEAL.
01/07/92	r/s	306.	Suppl memo suppt motn cmpl disc. pltf

DATE	NR.	NO.	PROCEEDINGS
		307.	Dclar Ernest T. Kaufmann suppt motn cmpl disc. pltf
		308.	Suppl dclar Ernest T. Kaufmann suppt motn cmpl disc. pltf FILED UNDER SEAL.
12/20/91	r/s		placed in fi not used-- Ord denyng pltf motn lv A/C. dfts
12/30/91	r/s	309.	ORDER pltfs may tke depo of Ohashi in Japan. pltf
		310.	ORDER enjoin pltf & cnsl frm commencing furth lawsuits arising out of MCA Acquisition w/out lv of crt. dfts. placed in fi not used-- Rvsd Ord enjn pltf & cnsl frm commencing furth lawsuits arising out MCA Acquisition w/out lv of crt.
		311.	ORDER enjoin pltfs & cnsl frm commencing furth lawsuits arisng out of MCA Acquisition w/out lv of crt. dfts
01/06/92	r/s	312.	Memo cntntns law/fact. pltf Minton
		313.	Memo cntntns fact/law purs LR 9.5. pltf
		314.	Rply dclar Irving Malchman suppt Karlin pltfs motn vol dism. plft
01/07/92	r/s	315.	Wit list. pltf Minton
01/08/92	r/s	316.	Dclar Paul C. Curnin opp motn cmpl disc. dfts
01/10/92	r/s	317.	Notc of Motn & motn for Ord cmpling prod docs, rtbl 01/21/92, @ 10:00 AM. pltf
		318.	Rply dclar Peter S. Linden suppt motn cmpl disc. pltf

DATE	NR.	NO.	PROCEEDINGS
		319.	1st rvisd jnt exhib list.
		320.	Dclar Walter Minton opp motn dism. pltf
		321.	jnt stmnt re motn cmpl furth prod docs. pltf
01/15/92	r/s	322.	2nd suppl dclar Ernest T. Kaufmann. pltf FILED UNDER SEAL.
01/13/92	r/s	323.	MO: Karlin pltfs motn for vol dism w/prej GRANTED, but not DISM frm iss of cntempt & for snctns; pltf motn cmpl off-cal forfail to meet/cnfer/ Drt DENIES W. Minton motn for lv to fi 1st A/C; Matsushita motn DISM GRANTED; no ruling on snctns. C/R Lena Van Smith
01/15/92	r/s	324.	Dclar Peter S. Linden suppt motn cmpl disc. pltf
		325.	Dclar cnsl re non coop. pltf
		326.	Rvisd wit list. pltf
		327.	Notc of Motn & motn for Ord cmpllng disc. rtbl 02-03-92, @ 10:00 AM. pltfs LODGED Ord to CRD.
		328.	Jnt stmny purs LR 1.15.2 re motn cmpl disc. placed in fi not used - Ord grnt lv fi 1st A/C. pltf placed in fi not used - 1st A/C; dmnd j/t. pltf placed in fi not used - Ord grntng pltf motn cmpl disc.
01/16/92	r/s	329.	Correctd notc of motn to cmpl prod docs. rtbl 01-27-92, @ 10:00AM., plt

DATE	NR.	NO.	PROCEEDINGS
01/17/92	r/s	330.	Objectns to propsd Ord denying pltf motn lv A/C. pltf
		331.	Objectns to form of Ord propsd by Matsushita dfts dism Karlin pltfs. pltfs
		332.	Notc of Motn & motn for Ord cmpllng prod cert docmnts w/hld by Matsushita dfts., rtbl 02-03-92, @ 10:00 AM. pltfs LODGED Ord
		333.	Dclar Peter S. Linden suppt motn cmpl prod cert docs. pltfs
		334.	Jnt stmnt re motn pltf cmpl prod cert docs w/hld. pltfs
		335.	Notc of Motn & motn to intervene in actn. rtbl 02-10-92,@ 11:00 AM. David & Andrew Minton LODGED Complt Intervene.
01/08/92	r/s	336.	Dclar Peter S. Linden re: suppl inventory docmnts prod by pltf to Matsushita dfts. pltfs FILED UNDER SEAL.
01/21/91	r/s	337.	Objectns to addtl graphic pltf.
		338.	Objectns to exhibs. pltf
01/22/92	r/s	339.	Dclar Paul C. Curnin Opp motn cmpl disc. dfts
01/28/92	r/s	340.	Suppl memo suppt motn Ord cmpllng prod docs w/hld. pltfs
01/29/92	r/s	341.	Suppl dclar Ernest T. Kaufmann suppt motn cmpl. pltf
		342.	Suppl memo suppt motn cmpl disc. pltfs

DATE	NR.	NO.	PROCEEDINGS
		343.	Dclar Joseph M. McLaughlin suppt motn limine exclude evid. dfts
		344.	Memo P/A suppt motn limine exclude. dfts
		345.	Memo P/A suppt motn limine exclude evid. dfts
		346.	Dclar Joseph M. McLaughlin suppt motn limine. dfts
		347.	Memo P/A suppt motn limine exclude evid. dfts
		348.	Dclar Joseph M. McLaughlin suppt motn quash subp. dfts
		349.	Memo P/A suppt motn quash trl subp. dfts
		350.	Trl brf. pltf Minton
		351.	Wit list. pltf Minton
		352.	Stmnt fact/law. pltf Minton
		353.	Exhib list. pltf Minton
		354.	Pre-trl Ord. pltfs Minton
		355.	Dclar Paul C. Curnin opp motn cmpl disc. dfts
01/28/92	r/s.	356.	ORDER the Karlin pltfs indiv claims vol DISM w/prej; this dism does not affect the comtempt of pltf., [Ent 01-30-92]
01/31/92	r/s	357.	Dclar Peter S. Linden opp dfts motn S/J. pltf FILED UNDER SEAL

DATE	NR.	NO.	PROCEEDINGS
1/22/92	am	358.	Declrn of Paul C. Curnin in opp to motn to compel discvy. dfts
		359.	Declrn of Paul C. Curnin regard'g PTC Ord. dfts
01/23/92	am	360.	Revised objs to dfts Graphics. ptlfs
01/27/92	am	361.	Declrn of Ernest T. Kaufmann in opp to dfts ex parte appl for Ord shorten'g ti. pltfs
01/29/92	am	362.	List of depons excerpts. pltf
		363.	Stmt of factual legal issues. dfts
		364.	Reply memo of P/A of David & Andrw Minton in suppt of motn to intervene. pltfs
01/31/92	r/s	365.	Notc lodging depos. pltf
		366.	Stmnt fact/legl iss's. pltf
		367.	Trl brf. pltf
		368.	Stmnt re limine motns. pltf
		369.	Memo opp dft limine motns. pltf
		370.	Dclar Peter S. Linden suppt motn limine. pltf
		371.	Limine motn rcnsidratn crt ruling 'Ohashi' & snctns. pltf
		372.	Submissn rspnse to crts directn re fi motns limine. pltf
		373.	Stmnt gen iss's opp motn S/J. pltf
		374.	Opp motn limine re dtrmnatn price. pltf

DATE	NR.	NO.	PROCEEDINGS
		375.	Memo P/A opp dfts 5th motn S/J; x-motn. pltfs
		376.	Opp to stmnt uncntrovrtd facts/ stmnt gen iss opp motn S/J. pltf
		377.	Appndx unrptd unofficially rptd authrits rlied upon suppt of class pltf opp to Matsushita dfts motn S/J. pltfs
		378.	Objectns to dclar Gerald L. Sauer & exhibs suppt motn S/J. pltf
		379.	Dclar Peter R. Dion Kindem opp motn S/J. pltf
		380.	Memo P/A opp motn S/J. pltf
02/03/92	r/s	381.	MO: furth hrng motn cmpl 02-10-92; list docs due 02-06-92; Crt DENIES privileged issue; crt hears motn limine & GRANTS how Matsushita reached price; valuatn of MCA by non-ptys; & SEC investigatn; DENIED rcnsidratn Ohassi., C/R Lois Anderson
		382.	Dclar Paul C. Curnin suppt dft motn limine exclude evid. dfts
		383.	Amd dclar Josph M. McLaughlin suppt motn quash trl subp. dfts
02/04/92	r/s	384.	Req voir dire questns. pltf Minton
02/04/92	r/s	385.	Req j/instr. pltf Minton
		386.	Req for J/instr
		387.	Correctd exhib list. Class pltfs

DATE	NR.	NO.	PROCEEDINGS
		388.	Objectns to propsd Ord denying pltf motn cmpl disc. pltf Minton
		389.	Rply memo P/A furth suppt motn S/J. dfts
02/05/92	r/s	390.	Objectns to form of Ord propsd by Matsushita dfts re motn cntmpt. pltfs
02/06/92	r/s	391.	Memo P/A opp motn limine re measure of dmages. pltf
		392.	Dclar Peter R. Dion Kindem opp motn. pltf
		393.	Suppl memo P/A Minton opp dft motn S/J. pltf
		394.	Objectns to dclar Paul Curnin & exhibs. pltf
		395.	Dclar Barry R. Ostrager purs directn Ord 02-03-92. dfts Matsushita
		396.	P/A opp limine motn preclude tstmny R. Stone. pltf
		397.	Notc mrkng depos. pltf
02/07/92	r/s	398.	Objectn of Sidney J. Sheinberg to trl subp to Price Waterhouse & Krieger.
		399.	Memo P/A suppt exprte applic quash subp. 3rd pty wit Krieger
		400.	Dclar srvc by mail of exprte applic. Krieger

DATE	NR.	NO.	PROCEEDINGS
		401.	Ex-Prte Applic quash subp. 3rd pty Wit Grieger & Price Waterhouse LODGED Ord.
		402.	Dclar Maurice Karlin Cncerning 11-04-91 ruling. pltfs
		403.	Dclar Jane Rockford. pltf
		404.	Dclar John Linder. pltf
		405.	Dclar Lawrence Epstein cncrning 11-04-91 ruling. pltf
		406.	Dclar Ernest T. Kaufmann re dfts motn cntrmpt & snctns. pltf
		407.	Furth memo opp motn cntempt. pltf
		408.	Objectns to propsd form of verdict. pltf
		409.	Dclar Beth Ann Karlin cncern 11-04-91 ruling. pltf
		410.	Dclar Bert P. Karlin. pltf
		411.	Opp exprte applic quash subp, etc. pltf
		412.	Ex-Prte Applic for Ord providng srvc of trl xubp. pltf LODGED Ord.
		413.	Dclar Ernest T. Kaufmann suppt ex-prte applic. pltf
02/11/92	r/s	414.	ORDER the motn for vol DISM w/prej of Karlin pltfs Complt GRANTED, excpt that the Karlin pltfs are not dism frm actn w/rspect to motn for cntempt prev fi by Matsushita dfts., [Ent 02-12-92] mld cpys, Notc.

DATE	NR.	NO.	PROCEEDINGS
02/07/92	r/s		Placed in fi not used - ORDER grntng pltf motn cmpl prod docs. pltf ORDER grntng pltf motn. cmpl disc., pltfs
		415.	Dclar Paul C. Curnin suppt exprte applic. dfts
02/10/92	r/s	416.	MO: Matsushita motn S/J GRANTED. Lois Anderson
02/11/92	r/s	417.	ORDER pltf Minton motn for lv to Amd is DENIED. dfts
02/07/92	r/s	418.	Stmnt re Ord directng prod. dfts
		419.	Rply memo P/A suppt motn limine to exclude evid 01-30-92. dfts
02/11/92	r/s	420.	ORDER Denying pltf W. Mintons motn cmpl disc. dfts
		421.	ORDER Grntng motn limine exclude evid SEC Investigatn Insider Trading .,dft
		422.	ORDER Grntng motn quash trl subp. dfts
			placed in fi not used- propsd Ord grntng Matsushita dfts motn snctns & cntmpt.
02/19/92	r/s		placed in fi not used- Ord grntng pltf motn limine re Ohashi.
02/20/92	r/s	423.	Amd ORDER the Complts in consolidated case DISM w/out lv to amd; jdgmnt may be ent DISM cnsolidatd actns w/prej; DISM all claims alleged agnst dft Matsushita excpt those alleging violatns of Rule 14d-10 promulgated under Securities Exchange Act of 1934., [Ent 02-21-92] mld cpys, Notc.

DATE	NR.	NO.	PROCEEDINGS
02/25/92	r/s	424.	Rcpt rptrs transc had 01-13-92.
02/26/92	r/s	425.	Objectns to (amd propsd) Ord & fndgs fact/cnclusns law grntng Matsushita motn S/J. class pltfs
		426.	Objectns to propsd Ord & fndgs fact/cnclusns law grntng dfts motn S/J. pltf Minton
02/27/92	r/s	427.	Dclar Carol W. Davies. dft
		428.	Ex-Prte Applic to suppl rcrd. dfts LODGED Ords to CRD.
02/28/92	r/s	429.	Dclar Barry R. Ostrager. dfts
3/2/92	r/s	430.	Opp to exprte applic Matsushita dfts to suppl rcrd. pltf
		431.	Dclar Peter S. Linden opp exprte applic Matsushita dfts suppl rcrd. pltf
3/3/92	els	432.	MO:C/R-Richard Fischer. HRG: Matsushita's ex parte applic to supplement record. Hrg hld. Crt ords mot grntd as to cause of actn.
		433.	ORD tht Matsushita's mot to supplement the record supprting the crt's 2-10-92 Ord granting S/J. in Matsushita's favor be, & hereby is grntd.
		434.	ORD tht the Matsushita's applic to supplement the record supprting the Crt's 2-10-92 Ord granting S/J. in favor of Matsushita's shall be heard on 3-4-92, 10AM. in Crtroom i of the above-entitled crt.

DATE	NR.	NO.	PROCEEDINGS
3/4/92	els	435.	Receipt for Reptr's transc had on 2-3-92 & 2-10-92.
03/16/92	r/s	436.	Errata re pleads inadvertently fi w/incorrect case number. Correct cover page. dfts LODGED dclar j/instr. to CRD.
10/01/91	sb	437.	Statmnt of genuine issue & opp to pltf Minton statmnt of Uncon fact & concl of law Dft Matsushita Acq Corp
		438.	Memo of P/A in opp to pltf Minton mot fr S/Adjudctn of issue dft Matsushita Acq Corp et al
10/21/91	sb	439.	Memo of P/A in opp to pltf mot fr lv to file 2nd Consolidated complt. dft Matsushita Acq Corp
12/2/91	sb	440.	Declar of Brian L Edwards dft Matsushita Acq Corp
12/6/91	sb	441.	Declar of Brian L Edwards ree mot fr contempt ord & for sanctns dft Matsushita Acq Corp
		442.	Declar of Brian L Edwards re mot to compel disc dft Matsushita Acq Corp
1/6/92	sb	443.	Witness List Matsushita dft
		444.	Declar of Brian L Edwards in suppt of dft resp to pltf inventory of docs produced to Matsushita dft
		445.	Resp to pltf inventory of docs produced to Matsushita dft

DATE	NR.	NO.	PROCEEDINGS
		446.	Memo of contention of fact & law dft Matsushita Acq Corp
		447.	Joint exh list
1/7/92	sb	448.	Supplemental memo of dft in opp to Epstein pltf mot to compel disc dft Matsushita Acq Corp
1/8/92	sb	449.	Declar Brian Edwards re pltf mot to compel disc dft Matsushi Acq Corp
	sb	450.	Revised statmnt pur to LR7.15.2 dft Matsushita Acq Corp
1/22/92	sb	451.	Memo of P/A in opp to Epstein pltf mot to compel disc dft Matsushita Acq Corp
		452.	Declar of Gerald L Sauer in suppt of mot fr S/J deft Matsushita Acq Corp
		453.	Notc of mot & mot fr S/J memo of P/A in suppt thereof retble 2-18-92 10am dft Matsushita Acq Corp
		454.	Separately stated obj to pltf exh dft Matsushita Acq Corp
		455.	Supplemental memo of dft in opp to pltf Minton mot to compel disc dft Matsushita Acq Corp
		456.	Declar of Brian L Edwards re dft memo of P/A in opp to Epstein pltf mot to compel disc dft Matsushita Acq Corp
1/22/92	sb	457.	Obj to Graphic evidence pur to LR 9.4.2. dft Matsushita Acq Corp

DATE	NR.	NO.	PROCEEDINGS
1/23/92	sb	458.	Delcar of Brian L Edwards in suppt of deft resp to pltf 2nd Supplemtnal inventory of docs prod to Matsushita dft
		459.	Resp to pltf 2nd Supplemtnal inventory of docs in fur suppt of dft mot fr sanctions & contempt dft Matsushita Acq Corp
1/24/92	sb	460.	Ex parte applic to Chnage hrg on Matsushita mot fr S/J to 2-10-92 11am & declar of Brian L Edwards in suppt of applic;
	sb	461.	Corrected memo of P/A in opp to Epstein pltf mot to compel disc dft Matsushita Acq Corp
1/27/92	sb	462.	Memo of P/A in opp to mot to intervene dft Matsushita Acq Corp
		463.	Ord granting ex parte applic hrg mot fr S/J 2-10-92 11am
		464.	Joint exh list submitted pur to LR 9.7 dft
1/28/92	sb	465.	Witness list dft Matsushita Acq Corp
		466.	Exh list dft
		467.	Trial brief pur to LR 9.11.2 dft Matsushita Acq Corp
		468.	Supplemental memo in opp to mot to compel disc dft Matsushita Acq Corp

DATE	NR.	NO.	PROCEEDINGS
1/29/92	sb	469.	Declar of Josph M Mclaughlin in suppt of dft mot to exclude all evidence relating to How Matsushita reached the price at which it purchased the shares of MCA Inc in tender Offer dft Matsushita Acq Corp
		470.	Declar of Brian Edwards re dft mot to compel certain disc Matsushita Acq Corp
		471.	Notc of mot to quash trial subp & notc of mot in limine to exclude certain evidence 2-3-92 10am dft Matsushita Acq Corp
		472.	Corrected exh list pur to LR 9.11.2 dft
		473.	Notc of errata re Matsushita statmnt of factual & legal issue pur to LR 9.11.2 dft
1/31/92	sb	474.	Notc of errata re delcar of Joseph M McLaughlin in suppt of mot to quash trial subp dft Matsushita Acq Corp
		475.	Memo of P/A in suppt of mot in limine to exclude all evidence relating to subject raised in pltf supplemental resp re expert Stone dft
		476.	Notc of mot in limine to exclude evidence relating to pltf 1-30-92 supplemental resp
		477.	Declar of Carol W Davies re dft to exclude all evidence relating to subject raised in pltf supplemental res re expert Stone

DATE	NR.	NO.	PROCEEDINGS
2/3/92	sb	478.	Declar of Carol W Davies filed in suppt of dft mot fr S/J dft Matsushita Acq Corp
2/4/92	sb	479.	Prop Jury instruction dft Matsushita Acq Corp
		480.	Req Voir Dire of Jury Panel dft Matsushita Acq Corp
2/5/92	sb	481.	Declar of Carol W Davies ree declar of Barry R Ostrager pur to direction of this crt deft Matsushita Acq Corp
		482.	Trial brief pur to LR 10 dft Matsushita Acq Corp
2/6/92	sb	483.	Applic & memo of P/A in suppt of ex parte applic to dism Epstein Quash Subp Strike pltf docs from Corrected exh list dft Matsushita Acq Corp
		484.	Declar of Carol W Davies re dft ex parte applic to disc Epstein quash subp & strike doc from Corrected exh list dft Matsushita Acq Corp
2/6/92	sb	485.	Prop General Verdict w/ Special Interrog dft Matsushita Acq Corp
11/25/91	sb	486.	Joint statmnt of Matsushita deft & Epstein pltf to LR 7.15.2. dft
1/27/92	r/s	487.	MO: Matsushita motn cntempt GRANTED as to all Epstein pltfs who are to produce by 02-07-92 or actn shall be dism; DENIED as to W. Mintons motn to cmpl Matsushita; GRANTED exptre S/J hrng 02-10-92; GRANTS snctns of amnt of cost of fi of motn. Lois Anderson

DATE	NR.	NO.	PROCEEDINGS
03/23/92	r/s		PIFNU- dclar Brian L. Edwards suppt motn protect Ord. dfts
11/19/91	r/s		PIFNU- Ord grntng pltf motn cmpl Geffen to appr & snctns. pltf
3/27/92	ess	488.	Receipt of Reptr's Transc had on 1-27-92.
3/31/92	bg	489.	Declar of Ernest T Kaufmann in suppt of ex parte applica to strike second amended prop ord & fndngs. pltfs
3/31/92	bg	490.	Ex parte aplica to strike second amended prop ord & fndngs. pltfs Lodged ord (Fw'd to CRD)
3/31/92	bg		Order grtng pltfs' ex parte applica to strike defts' second amended prop ord 7 fndngs (READ & PLACED IN FI NOT USED)
3/31/92	bg	491.	Declar of Peter S Linden in suppt of pltfs' ex parte applica to strike defts' second amended prop ord & fndngs of fact & conclu of law. pltfs
3/31/92	bg	492.	Objs to second amended prop ord & fndngs of fact & conclus of law grtng mot for s/j. pltfs
4/03/92	r/s	493.	Memo P/A suppt rvised Ord & fndgs fact/cnclusns law grntng dfts motn S/J dism cnsolidatd act. dfts LODGED prop Ord to CRD.
		494.	Dclar Herbert M. Wachtell suppt rvised Ord & fndgs fact/cnclusns law. dfts

DATE	NR.	NO.	PROCEEDINGS
03/27/92	r/s	495.	Objectns to 2nd propsd Ord a fndgs of fact/ cnclusns law. grntng dfts motn S/J. p
04/07/92	r/s	496.	Objectns to Rvisd Ord & Fndgs of fact/cnclusns law Grntng Matsushita dfts motn S/J. pltf
04/10/29	r/s	497.	Rcpt rptrs transc had 11-04-91.
		498.	objectns to MCA dfts Revised propsd Ord and Fndgs fact/cnclusns law grntng Matsushita dfts motn S/J. Class pltfs
		499.	Dclar Roger W. Kirby opp MCA dfts propsd Rvised Ord, etc. pltfs
04/15/92	r/s	500.	Rply memo P/A suppt rvised Ord fndgs/fact, etc. dfts
04/16/92	r/s	501.	Correctn to rply memo P/A. dfts
	PIFNU		Complt for violatn of securities laws, in intervention. pltf
	PIFNU		stmnt uncntrovrtd facts/cnclusns law. dft Matsushita
	PIFNU		Ord strikng ports of S/J motn tkng dfts motn off cal & for snctns. pltf
	PIFNU		Ord grntng pltfs exprte applic providng for srvc of trl subp. pltf
	PIFNU		Ord grnt Krieger & Price Water-house exprte applic to quash subp.

DATE	NR.	NO.	PROCEEDINGS
			PIFNU final jdgmnt grntng Matsushita dfts motn S/J. dfts
			PIFNU Ord a fndgs of fact/cnclusns law grntng Matsushita dfts motn S/J.
			PIFUU Ord & fndgs fact/cnclusns law grntng Matsushita dfts motn S/J. (Amd)
			PIFNU final jdgmnt grntng Matsushita dfts motn S/J. dfts
		502.	Second Amd Ord & Fndgs of Fact & Cnclusns of law Grntng Matsushita dfts motn for S/J Dism the cnsolidatd actns; Matsushita awarded costs and atty fees and snctns., [Ent 04-17-92] mld cpys, Notc., MD JS-6.
4/8/92	ess	503.	Suppl declr of Herbert M. Wachtell in suppt of revised (prop ord & findngs of facts & concluc of law defts' mot for S/J. dfts
4/17/92	ess	504.	2nd suppl declr of Herbert Wachtell in suppt of revised (prop Ord, etc. dfts)
4/16/92	ess		LFNU re Ord grnting mot in limine to exclude evidence relating to plfs' 1-30-92 supple resp. dfts
			LFNU re Final jdmt granting Matsushita's mot for S/J.dfts
			LFNU re Ord granting mot in limine to exclude all evidence relating to How Matsushita reached Price at which it purchased. dfts

DATE	NR.	NO.	PROCEEDINGS
			PLFNU re Ord granting'd defts' ex parte appl to schedule hrg on Matsushita mot to quash. dfts
			PLFNU re Ord granting mot to quash trial subpoenas & to strike all irrelevant docs frm plfs corrected exhbt list.
5/8/92	pb	505.	PLF, (Walter Minton), FLD NTC OF APP TO THE 9th C/A FRM 2ND AMD ORD FLD ON 4-16-92; AMD ORD FLD ON 2-20-92; ORD FLD 2-11-92. PTY SVC: Peter R. Dion Kindem; Greenberg, Glusker, Fields, Claman & Machtinger; Kaufman, Malchaman, Kaufman & Kirby of Los Angeles & New York; Simpson, Thacher & Bartlett; Wachtell, Lipton on 5-26-92. FEES BILLED. (CV-91-0336-R)
5/12/92	pb	506.	ATTYS FOR PLF, (Roger W. Kirby and Kaufman Malchaman Kaufman & Kirby, FLD NTC OF APP TO THE 9th C/A FROM ORD FLD 1-27-92. PTY SVD: Ernest T. Kaufmann; Rosenfield Meyer & Susman; Greenberg, Glusker, Fields, Claman & Machtinger; Wachtell, Lipton, Rosen & Katz; Simpson, Thacher & Bartlett; Berman, Blanchard, Mausner & Kindem on 5-28-92. FEES BILLED. (CV-90-6744-R; CV-90-6774-R; CV-90-6775-R)
5/12/92	pb	507.	PLF (Epstein), Linder, Rockford etc. FLD NTC OF APP TO THE 9th C/A FROM 2ND AMD ORD FLD 4-16-91; ord fld 8-13-91; AMD

DATE	NR.	NO.	PROCEEDINGS
			ORD FLD 2-20-92; MO: FLD 4-1-91; MO FLD 9-6-91; MO:FLD 12-16-91; MO FLD 1-27-92; MO: FLD 4-1-91: PTY SVD: Ernest Kaufman; Rosenfeld Meyer & Susman; Greenberg, Glusker, Fields, Claman & Machtinger; Wachtell, Lipton, Rosen & Katz; Simpson, Thacher & Bartlett; Berman, Blanchard, Mausner & Kindem on 5-28-92. FEES BILLED. (CV-90-6744-R; CV-90-6774-R; CV-90-6775-R)
5/15/92	pb	508.	PLF (Epstein), Linder, Rockford etc. FLD AMENDED NTC OF APPL TO THE 9th C/A FROM 2ND AMD ORD FLD 4-16-91; FLD MO 12-9-92; ORD FLD 8-13-91; AMD ORD FLD 2-20-92; MO: FLD 4-1-92; MO FLD 9-6-91; MO: FLD 12-16-91; MO FLD 1-27-92; MO: FLD 4-1-91: PTY SVD: Ernest Kaufmann; Rosenfeld Meyers & Susman; Breegnberg, Glusker, Fields, Claman & Machtinger; Wachtell, Lipton, Rosen & Katz; Simpson, Thacher & Bartlett; Berman, Blanchard, Mausner & Kindem on 5-28-92. FEES WAIVED. (CV-90-6774-R; CV-90-6774-R; CV-90-6775-R)
		509.	Rcpt rptrs fransc had 07-01-91 (30 pgs).
05/14/92	r/s	510.	Transc desig & Ord form.
05/28/92	r/s	511.	Rcpt for rptrs transc had 07/01-91.

DATE	NR.	NO.	PROCEEDINGS
06/08/92	r/s	512.	Transc desig & Ord form.
		513.	Transc desig & Ord form.
06/10/92	r/s	514.	Amd rcpt for rptrs transc had 12-16-91.
06/22/92	r/s	515.	Rcpt rptrs transc had 09-03-91.
06/23/92	r/s	516.	Rcpt rptrs transc 04-01-91.
06/30/92	r/s	517.	Rcpt rptrs transc had 12-28-90 & 12-09-91.
07/16/92	r/s	518.	ORDER that the *Epstein* plfs & plf Walter Minton tke nothing, that the actns are DISM on merits, and that dfts Matsushita Electric Industrial Co., Ltd., Matsushita Holding Corp., Matsushita Acquisition Corp., MCA Inc., Lew R. Wasserman and Sidney J. Sheinberg rcovr frm the *Epstein* plfs and plf Walter Minton the costs of this actn., [Ent 07-21-92] mld cpys, Notc.
05/13/92	r/s	519.	Rcpt for rptrs transc had 12-16-91.
07/21/92	r/s	520.	Notc of Mot & mot to vacate purported amd jgm fi on/or about 07-17-92, rtbl 08-17-92, @ 10:00 AM, Crtrm 8. plfs LODGED Ord to CRD.
07/27/92	r/s	521.	Notc applic & applic for snctns upon finding of cntempt. dft
		522.	Dclar Paul C. Curnin suppt applic for snctns upon finding cntempt. dft

DATE	NR.	NO.	PROCEEDINGS
		523.	Dclar Carol W. Davies suppt opp to mot Vacate jgm. dfts.
		524.	Opp to mot vacate. dfts
07/31/92	r/s	525.	Notc errata re notc to clk of applic to tax costs. dfts
08/03/92	r/s	526.	dclar Ernest T. Kaufmann opp applic for snctns. plf
07/29/92	r/s	527.	Notc to clk of applic to tax costs. dfts
		528.	dclar Carol W. Davies re dclar suppt applic for costs. dfts
		529.	dclar Paul C. Curnin suppt applic for costs. dfts
		530.	BILL OF COSTS, rtbl 08-17-92, @ 10:00 AM. dfts TAXED COSTS $7,686.
08/04/92	r/s	531.	Notc chng dte for hrng applic to tax costs, rtbl 08/17/92, @ 10:00 AM. dfts
08/07/92	r/s	532.	objectns to Matsushita dfts applic to tax costs. plf
		533.	dclar Peter R. Dion Kimdem suppt plf objectns to Matsushita applic costs. plf
		534.	dclar Peter S. Linden opp Matsushita applic tax costs. plfs

DATE	NR.	NO.	PROCEEDINGS
08/03/92	r/s	535.	memo P/A opp applic for snctns upon finding of cntempt. plf FILED UNDER SEAL.
8/3/92	pb	536.	PLFS, (EPSTEIN, LINDER ETC.) FLD SUPPLEMENTAL AND PROTECTIVE AMENDED NTC OF APP TO THE 9th C/A FROM JGM FLD 4-16-92 & ENTRD 4-17-92; ORD FLD 8-13-91; AND ORD ENTRD 2-21-91; ORD ENTRD 4-1-91 & 9-6-91; ORD FLD 12-16-91; ORD FLD 1-27-92; JDMT ENTRD 7-21-92. PTY SVC: Ernest T. Kaufmann; Robert B. Rotstein; Robert S. Chapman; Theodore N. Mirvis; Dennis Jacobs; Peter Kindem on 8-20-92. FEES WAIVED.
8/3/92	pb	537.	PLF, (KIRBY; KAUFMAN ETC.) FLD SUPPLEMENTAL AND PROTECTIVE AMENDED NTC OF APP TO THE 9th C/A FROM ORD FLD 1-27-92; JGM FLD 4-16-92, ENTRD 4-17-92; JGM ENTRD 7-21-92. PTY SVC: Ernest T. Kaufmann; Robert H. Rotstein; Robert S. Chapman; Theodore N. Mirvis; Dennis Jacobs; Peter Kindem on 8-20-92. FEES WAIVED.
8/21/92	gk	---	LODGED MATSUSHITA DFTS' PROP ORD DENYING MOT TO VACATE JGM (Fwd to CRD).

DATE	NR.	NO.	PROCEEDINGS
8/21/92	gk	---	LODGED MATSUSHITA DFTS' PROP ORD AWARDING SANCTIONS (Fwd to CRD).
08/14/92	r/s	538.	rply dclar Carol W. Davies Suppt applic for costs by prevailing pty. dfts
08/07/92	r/s	539.	objectns to bill of costs. plf
		540.	dclar Douglas Cardwell opp applic costs. plfs
08/18/92	r/s	541.	MO: plfs mot to vacate amd jgm dendfnse applic for snctns gr $1,500.; plfs mot stay pend appeal den. Sharon Seffen
08/24/92	r/s	542.	mot to retax costs awarded by clk, rtbl 09-21-92, @ 10:00 AM. plf
08/25/92	r/s	543.	ORD den mot vacate jgm. dfts
		544.	ORD dft applic gr; the Epstein plfs and their cnsl must pay $15,000. to the ord of Matsushita Electric Industrial Co., Ltd. as snctns., [Ent 08-31-92] mld cpy dft.
09/01/92	r/s		Deposited $15,000 into the register of the crt. plf
8/27/92	bg	545.	obj to form of ord prop by Matsushita defts awarding sanctions. pltfs
9/2/92	bg	546.	Opp to mot to retax costs. defts
9/3/92	bg	547.	Memo of p&a in opp to mot to retax costs awarded by clk; declar of Peter S Linden in opp to mot to retax costs. pltfs

DATE	NR.	NO.	PROCEEDINGS
08/10/92	bg	548.	rply memo P/A suppt mot vacate jgm. plfs
		549.	rply memo in connectn w/applic for snctns upon finding cntempt. dfts
	r/s	550.	MO: on crts own mot the 10:00 AM mot heretofore shced 08-17-92 cont to 08-18-92, @ 09:00 A.M, n/r
08/12/92	r/s	551.	ORD allow apprnce non-res atty Peter S. Linden by desig Ernest T. Kaugmann., plf
08/13/92	r/s	552.	dclar Peter S. Linden rspnse to objectns to applic for costs. plfs
		553.	suppl dclar Jeffrey H. Squire opp applic for costs. plfs
09/14/92	r/s	554.	MO: Mintons mot to retax costs awarded by clerk cont to 10-05-92, @ 10:00 AM; replies due 09-14-92. n/r
9/23/92	dlm	555.	PLF (LARENCE EPSTEIN) FLD SECOND SUPPLEMENTAL AND PROTECTIVE AMENDED NOTIC OF APPEAL TO THE 9TH C/A FRM ORD FLD ON 8/25/92. FEES WAIVED. PTY SVC: ERNEST T. KAUFFMANN: ROBERT H. ROTSTEIN: ROBERT S. CHAPMAN: THEODORE N. MIRVIS: DENNIS JACOBS: PETER KINDEM ON 10/15/92.

DATE	NR.	NO.	PROCEEDINGS
9/23/92	dlm	556.	PLF (ROGER W. KIRBY) FLD SECOND SUPPLEMENTAL AND PROTECTIVE AMMENDNOTICE OF APPEAL TO THE 9TH C/A FRM ORD FLD ON 8/25/92 FEES WAIVED. PTY SVC: ERNEST T. KAUFFMANN: ROBERT H. ROTSTEIN: ROBERT S. CHAPMAN: THEODORE N. MIRVIS: DENNIS JACOBS: PETER KINDEM ON 10/15/92.
10/5/92	rm	557.	MO: Minton's mot to retax costs awd by clrk is DENIED. Plft to prepare prop ord. CR. L. Anderson
10/14/92	rm	558.	Recpt ofr reprtr's trnscrpts of hrg on 8/18/92.
1/13/93	dm		FWD to 9th CCA (9) VOLS. ORIG REPTR'S TRANSCR. (ROUTE TO APPEAL SECTN).
2/22/93	yrt		Rcvd frm 9th CCA 1 vol orig clks file.
12/20/93	jcw		LODGED cc of Order frm 9th CCA, that this case is ord resubmitted as of 10/12/93.
7/11/94	yrt		FWD to 9th CCA 36 vols orig file.
			FWD to 9th CCA 5 vols rptr trascp.
3/24/95	yrt		LODGED cc ord frm 9th CCA vcating order of dist court.
3/28/95	yrt	559.	Ntc of hrg on filing & spreading judgment of CCA; hrg on 4/17/95, 11:00.

DATE	NR.	NO.	PROCEEDINGS
04/06/95		563.	RECORD on appeal returned from U.S. Court of Appeals vols: 10 (fvap) [Entry date 05/15/95]
04/14/95		562.	NOTICE of association of cnsl by plaintiff Lawrence Epstein (yt) [Entry date 04/28/95]
04/17/95		560.	MANDATE from Circuit Court of Appeals vacating & remanding is hereby fld and spread upon the minutes of this USDC. The record reflects that costs of the prevailing party were taxed by the 9th CCA in the amount of $805.59 on 3/20/95. PTC set 9/15/95, 11:00 and trial set 10/10/95, 9:00 (yt) [Entry date 04/21/95]
04/17/95		561.	CERTIFIED COPY of Appellate Court Order: vacating and remanding (ENT 4/21/95) MD JS-5 (yt) [Entry date 04/21/95] [Edit date 04/21/95]
06/5/95		564.	MEMO IN OPP by plaintiff to motion for class certification (yt) [Entry date 06/06/95]
06/5/95		565.	DECLARATION of Peter S. Linden by plaintiff re motion for certification of class (yt) [Entry date 06/06/95]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Proceedings include all events.

No. 92-55675

LAWRENCE EPSTEIN; JOHN LINDER; JANE ROCKFORD, AS TRUSTEE OF THE MICHAEL J. ROCKFORD TRUST; MAURICE KARLIN; RUTH KARLIN; BETH ANN KARLIN; BERT P. KARLIN

Plaintiffs - Appellants

and

WALTER MINTON

Plaintiff

v.

MCA, INC., MATSUSHITA ACQUISITION CORPORATION; MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.; MATSUSHITA HOLDING CORPORATION; LEW WASSERMAN; SIDNEY J. SHEINBERG

Defendants - Appellees

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
6/9/92	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. setting schedule as follows: Fee payment is due 6/23/92 ; CADS due 6/23/92 for Ernest T. Kaufman; appellant's designation of RT is due 5/22/92,,,,,, ; appellee's designation of RT is due 6/1/92,,,,,, ; appellant shall order transcript by 6/11/92,,,,,, ; court reporter shall file transcript in DC by 7/13/92; certificate of record shall be filed by 7/20/92 ; appellant's opening brief is due 8/28/92,,,,,, ; appellees' brief is due 9/28/92,,,,,, ; appellants' reply brief is due 10/13/92,,,,,, ; [92-55675] (rmw) [92-55675]
6/9/92	2	Received copy of amended notice of appeal from district court. Docket fee of $105.00 has been PAID. Date of payment: May 15, 1992. (rmw) [92-55675]
6/23/92	4	Filed attorney for Appellant in 92-55675 Civil Appeals Docketing Statement served on 6/22/92 (to CONFATT) [92-55675] [92-55675] (dr) [92-55675]
8/14/92	5	Filed order (Joseph T. SNEED,): Aples opposed motion to consolidate Nos 92-55288, 92-55632, 92-55675 and 92-55677 is granted in part. Nos. 92-55632, 92-55675 and 92-55677 shall be consolidated. However, all of the above appeals shall be calendared before same merits panel. Epstein aplts motion to file a 100 page opening brief is granted in part. Epstein aplts brief shall not exceed 65 pages. Aplt Walter Minton's motion to file 100-page opening brief is granted in part. The brief shall not exceed 65 pages.Epstein aplts and aples motions for ext of time to file the briefs are granted. Briefing shall proceed as follows for nos. 82-55632, 92-55675 and 92-55677: all remaining opening brief are due Sept 24, 1992, aples' ans brief(s) are due Oct 26, 1992, optional reply briefs due 14 days from service ans briefs. Briefing in appeal No. 92-55288 shall proceed as follows:

DATE	NO.	PROCEEDINGS
		aples ans brief due Sept 14, 1992, optional reply brief due 14 days from service ans brief. [92-55632, 92-55675, 92-55677] (ec) [92-55632 92-55675 92-55677]
8/20/92	6	Received copy of Supplemental & Protective Amended notice of appeal from district court filed: 8/3/92 under case #92-55675. (case file) (lu) [92-55675]
9/3/92	7	Filed CERTIFICATE OF RECORD ON APPEAL RT filed in DC 5/15/92 [92-55632, 92-55675, 92-55677] (lu) [92-55632 92-55675 92-55677]
9/3/92	8	Filed CERTIFICATE OF RECORD ON APPEAL RT filed in DC 6/30/92 [92-55675, 92-55632, 92-55677] (lu) [92-55632 92-55675 92-55677]
9/3/92	9	Filed CERTIFICATE OF RECORD ON APPEAL RT filed in DC 6/30/92. [92-55677, 92-55632, 92-55675] (lu) [92-55632 92-55675 92-55677]
9/25/92	10	Filed original and 15 copies Appellant Walter Minton in 92-55632 opening brief (no) 63 pages and five excerpts of record in 4 volumes; served on 9/24/92 [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]
9/25/92	11	Filed original and 15 copies Appellant Roger W. Kirby in 92-55677 opening brief (Informal: no) 33 pages and five excerpts of record in 1 volume; served on 9/24/92 [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]

DATE	NO.	PROCEEDINGS
9/28/92	12	Filed original and 15 copies Appellant Walter Minton in 92-55632 opening brief (Informal: no) 65 pages and five excerpts of record in 2 volumes; served on 9/24/92 [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]
9/28/92	13	Filed Appellant Walter Minton in 92-55632's motion to take judicial notice (CIVATT) [92-55632, 92-55675, 92-55677] served on 9/24/92 [2217297] [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]
9/30/92	16	Case released from Pre-Briefing Conference program. (mlm) [92-55632 92-55675 92-55677 92-55709 92-55914 92-55923 92-55958 92-56004 92-56008 92-56012 92-56026 92-56031]
10/6/92	14	Filed order (Cecil F. POOLE,): The ct is in receipt of the aples mtn to file a 130 page aples aplts opposition and aples reply to aplt opposition. Aples mtn to file an oversize brief is granted in part. The aples briefs shall not exceed 65 pages. The briefing schd established 8/14/92 remains in effect. [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]
10/8/92	15	Received copy of supplemental & protective amended notice of appeal from district court Filed: 8/3/92. (case file) (lu) [92-55632 92-55675 92-55677]
10/13/92	17	Case released from Pre-Briefing Conference program. (mlm) [92-55632 92-55675 92-55677 92-55966 92-55976 92-55977 92-56029 92-56052 92-56084 92-56104 92-56129 92-56150 92-56167 92-56170]

DATE	NO.	PROCEEDINGS
10/19/92	18	Received copy of 2nd Supplemental & Protective AMENDED NOA from district court Filed: 9/23/92. (case file) (lu) [92-55675]
10/21/92	19	Filed order (Deputy Clerk: lp) The ct is in receipt of plaintiff's mtn to supplement the CADS. The mtn is unnecessary this appeal was released from CONFAT 10/13/92. The ct is also in receipt of aplts mtn to supplement the record the record with documented history of events that have taken place in the DC after the NOAs were filed. The mtn is denied. [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]
10/26/92	20	Filed aples' motion to extend time to file appellee's brief (PROMO) [92-55632, 92-55675, 92-55677] served on 10/19/92 [2253854] (tsp) [92-55632 92-55675 92-55677]
10/26/92	21	Filed Appellants' statement of non-opposition of aplt Minton to mot of aples for ext of time to file answering brief. (PROMO) [92-55632, 92-55675, 92-55677] (tsp) [92-55632 92-55675 92-55677]
11/27/92	25	Filed original and 15 copies appellee Lew Wasserman in 92-55632, Sidney J. Sheinberg in 92-55632's 63 pages brief, 5 suppl Exc. vols: ; served on 11/25/92 [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]

DATE	NO.	PROCEEDINGS
11/27/92	27	Received orig. 15 copies Matsushita Acquis in 92-55675, Matsushita Electric in 92-55675's brief of 62 pages 5 suppl exc; served on 11/25/92 deficient: Csl has submitted 2 aples briefs. Csl notified that a mtn is needed for filing. [92-55675, 92-55632] (wp) [92-55675]
11/27/92	46	Received orig. 15 copies Matsushita Electric in 92-55675's brief of 45 pages 5 exc; served on 11/25/92 deficient: party submitted 2 briefs, a mtn is needed. [92-55675, 92-55632, 92-55677] Csl notified (wp) [92-55632 92-55675 92-55677]
11/30/92	22	Filed order (Deputy Clerk: lp) granting appellee's motion to extend time to file appellee's brief [2253854-1] appellees' brief due 11/25/92. The ct is also in receipt of plt's motion's response to the mot and the defts' ltr of 11/4/92. The optional reply brief is due 14 days from service of the answering brief. in 92-55632, 92-55675, 92-55677 [92-55632, 92-55675, 92-55677] (tsp) [92-55632 92-55675 92-55677]
12/1/92	23	10 day oral extension by phone of time to file Walter Minton in 92-55632's reply brief. [92-55632, 92-55675, 92-55677] appellants' reply brief due 12/21/92 in 92-55632; (cb) [92-55632 92-55675 92-55677]
12/1/92	24	10 day oral extension by phone of time to file Lawrence Epstein in 92-55675, John Linder in 92-55675, Jane Rockford in 92-55675, Maurice Karlin in 92-55675, Ruth Karlin in 92-55675, Beth Ann Karlin in 92-55675, Bert P. Karlin in 92-55675,

DATE	NO.	PROCEEDINGS
		Roger W. Kirby in 92-55677, Kaufman, Malchman in 92-55677's reply brief. [92-55632, 92-55675, 92-55677] appellants, reply brief due 12/21/92 in 92-55632, in 92-55675, in 92-55675, in 92-55675, in 92-55675, in 92-55675, in 92-55675, in 92-55677, in 92-55677; (cb) [92-55632 92-55675 92-55677]
12/10/92	28	Received from Joseph M. McLaughlin, letter dated Dec 8, 1992 with corrected affidavits of service for aples' briefs served by Matsushita in these appeals. [92-55632, 92-55675, 92-55677] (ec) [92-55632 92-55675 92-55677]
12/17/92	30	Filed order (Deputy Clerk: lp) Plaintiff's mtn for oral argument and any response thereto shall be referred to the panel that will consider the merits of the appeal. The plaintiff's mtn to expedite oral argument is denied. This appeal shall be calendared in due course. The plaintiff's mtn for leave to file a 40 page reply brief is denied. The reply brief shall be filed by 12/24/92 and shall consist of no more than 25 pages. [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]
12/17/92	31	Filed appellees' memorandum in response to aplts' motion to set case for oral argument... served on 12/16/92 ********* [92-55675] (ec) [92-55675]
12/24/92	33	Filed original and 15 copies Walter Minton in 92-55632 reply brief, (Informal: no) 25 pages; served on 12/21/92 [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]

DATE	NO.	PROCEEDINGS
12/28/92	32	Filed original and 15 copies Lawrence Epstein in 92-55675 reply brief, (Informal: no) 25 pages; served on 12/24/92 [92-55675, 92-55632, 92-55677] (ft) [92-55632 92-55675 92-55677]
1/4/93	34	Filed motion and deputy-clerk order :(Deputy Clerk: lp) The request for judicial notice and any responsive filings shall be referred to the merits panel. [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]
1/19/93	36	FILED AS OF 9/3/92, CERTIFIED RECORD ON APPEAL IN 41 VOLS. (TOTAL): 36 Clk's Rec 5 RTS (ORIG) [92-55675, 92-55632, 92-55677] [92-55675, 92-55632, 92-55677] (rc) [92-55632 92-55675 92-55677]
2/16/93	37	Filed Lew Wasserman in 92-55675, Sidney J. Sheinberg in 92-55675 additional citations, served on 2/12/93.(records for PANEL) [92-55675, 92-55632] (jlc) [92-55632 92-55675]
2/25/93	38	Received Barry Ostrager for Appellee Matsushita Acquis, Appellee Sidney J. Sheinberg, Appellee Lew Wasserman, Appellee Matsushita Holding, Appellee Matsushita Electric in 92-55632 letter dated 2/24/93 re: I write to advise the ct of a recent decision in a related state ct proceeding... (CASEFILE) [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675, 92-55677]

DATE	NO.	PROCEEDINGS
3/4/93	40	Filed Appellants ltr dtd 3/3/93 in response opposing atty's ltr dtd 2/24/93 (CIVATT) served on 3/3/93 192-55675] (mhf) [92-55675]
4/5/93	39	Calendar check performed [92-55632, 92-55675, 92-55677] (th) [92-55632 92-55675 92-55677]
4/22/93	41	Filed order (Deputy Clerk: MEH) MCA's 2/24/93 ltr, re possible mootness of some claims based on a 2/12/93 Delaware Chancery Court decision, and aplts' 3/3/93 response thereto are REFERRED TO THE PANEL on the merits for such consideration as the panel deems approp. Copies of the ltrs and attachments thereto have been sent to the records unit with this order. [92-55288, 92-55632, 92-55675, 92-55677] (sw) [92-55288 92-55632 92-55675 92-55677]
5/17/93	44	Received Matsushita Electric in 92-55632 additional citations, served on 5/14/93 [92-55632, 92-55288, 92-55675, 92-55677] (PANEL faxed 7/8/93) (wp) [92-55288 92-55632 92-55675 92-55677]
5/24/93	42	Calendar check performed [92-55288, 92-55632, 92-55675, 92-55677] (aw) [92-55288 92-55632 92-55675 92-55677]
5/28/93	43	Calendar materials being prepared. [92-55632, 92-55675, 92-55677] [92-55632, 92-55675, 92-55677] (mw) [92-55632 92-55675 92-55677]
6/4/93	45	CALENDARED: PASADENA Aug 2 1993 1:30 pm Courtroom 2 [92-55632, 92-55675, 92-55677] (aw) [92-55632 92-55675 92-55677]

DATE	NO.	PROCEEDINGS
7/20/93	47	Filed Appellant Lawrence Epstein's motion to consolidate oral argument of related cases, or in the alternative changing order of argument. (PANEL) [92-55632, 92-55288, 92-55675, 92-55677] served on 7/19/93 [2395377] [92-55632, 92-55288, 92-55675, 92-55677] (wp) [92-55288 92-55632 92-55675 92-55677]
7/26/93	48	Filed order (Deputy Clerk: gb) Aplt's mtn of 7/20/93 is granted in part. Argument in the above caption ed cases shall be consolidated. Each side shall have 40 minutes to present arguments. (PASADENA) [92-55632, 92-55288, 92-55675, 92-55677] (wp) [92-55288 92-55632 92-55675 92-55677]
8/2/93	49	ARGUED AND SUBMITTED TO William A. NORRIS, Charles E. WIGGINS, Diarmuid F. O'SCANNLAIN [92-55288, 92-55632, 92-55675, 92-55677] (lu) [92-55288 92-55632 92-55675 92-55677]
8/10/93	50	Filed order (William A. NORRIS, Charles E. WIGGINS, Diarmuid F. O'SCANNLAIN,): The parties shall file simultaneous suppl briefs addressing the preclusive effect if any of the Delaware Chancery Ct's approval of the class settlement releasing all federal claims arising from Matsushita's tender offer for MCA shares. The suppl briefs shall be filed with the ct no later than 21 days after the filing of this order. Submission is Vacated. The cases will be resubmitted upon the filing of the suppl briefs. [92-55632, 92-55288, 92-55675] (wp) [92-55288 92-55632 92-55675]

DATE	NO.	PROCEEDINGS
8/24/93	53	Rec'd notice of change of firm's name Kaufman, Malchman, Kaufmann & Kirby has become KAUFMAN, MALCHMAN, KIRBY & SQUIRE (same address). Ernest T. Kaufmann is no longer a member of the firm. (Casefiles) [92-55675, 92-55677] (gva) [92-55675 92-55677]
9/1/93	55	Filed Matsushita Electric motion requesting oral argument (PANEL) [92-55632, 92-55675, 92-55677] served on 8/31/93 [2420393] (wp) [92-55632 92-55675 92-55677]
9/1/93	56	Filed original and 15 copies Appellee Matsushita Electric supplemental brief of 32 pages and 5 suppl excerpts, served on 8/31/93 (PANEL) [92-55632, 92-55288, 92-55675, 92-55677] (wp) [92-55288 92-55632 92-55675 92-55677]
9/1/93	57	Filed original and 15 copies Lawrence Epstein supplemental brief of 38 pages, 5 excerpt entitled declaration transmitting delarware documents relevant to court's order for further briefing. served on 8/31/93 (PANEL) [92-55632, 92-55288, 92-55675, 92-55677] (wp) [92-55288 92-55632 92-55675 92-55677]
9/2/93	58	Recvd Notice from atty Ernest T. Kaufmann change in firm name only. (CASEFILE) served on 8/31/93 [92-55675, 92-55677] (wp) [92-55675 92-55677],

DATE	NO.	PROCEEDINGS
9/20/93	59	Received original and 15 copies Appellee MCA, Inc. in 92-55632, Appellee Sidney J. Sheinberg in 92-55632 supplemental brief of 13 pages, served on 9/17/93 deficient: ct did order this brief : Notified counsel. (PANEL) [92-55632, 92-55288, 92-55675] (wp) [92-55288 92-55632 92-55675]
9/22/93	60	Filed Plaintiffs-Appellants' motion to strike whole of "Reply Brief of Appellees on Preclusive Effect of Delaware Settlement" (PANEL); [92-55675, 92-55632, 92-55677] served on 9/21/93 [2431624] [92-55675, 92-55632, 92-55677] (sa) [92-55632 92-55675 92-55677]
9/23/93	61	Filed order (William A. NORRIS, Charles E. WIGGINS, Diarmuid F. O'SCANNLAIN,): The ct will hear oral argument concerning the preclusive effect if any of the Delaware Chancery Ct's approval f the class settlement releasing all federal claims arising from Matshita's tender offer for MCA shares. Argument will be heard on 10/12/93, at 1:00 p.m. in courtroom 2 of the USCA in San Francisco. Each side will be allotted 30 minutes of argument. (csl Phoned) [92-55632, 92-55288, 92-55675] (wp) [92-55288 92-55632 92-55675]
9/23/93	62	Received Matsushita Electric in 92-55632, Matsushita Holding additional citations, served on 9/22/93 (PANEL) [92-55632, 92-55288, 92-55675] (wp) [92-55288 92-55632 92-55675]

DATE	NO.	PROCEEDINGS
9/29/93	63	Filed order (William A. NORRIS, Charles E. WIGGINS, Diarmuid F. O'SCANNLAIN): The Epstein plaintiff-aplt's mtn to strike the "Reply brief of deft-aples on Preclusive Effect of Delaware Settlement" is DENIED. The Epstein aplt's mtn to file a reply brief is GRANTED. They may file a reply brief of not more than 15 pgs. by no later than Wednesday, 10/6/93. (phoned out) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
10/5/93	64	Filed original and 15 copies Epstein's reply brief, (Informal: no) 11 pages; served on 10/4/93 (PANEL) [92-55632, 92-55288, 92-55675, 92-55677] (wp) [92-55288 92-55632 92-55675 92-55677]
10/12/93	65	ARGUED AND SUBMITTED TO William A. NORRIS, Charles E. WIGGINS & Diarmuid F. O'SCANNLAIN; CJJ. [92-55288, 92-55632, 92-55675] (jr) [92-55288 92-55632 92-55675]
12/22/93	67	Received Herbert M. Wachtell for Appellees' letter dated 12/21/93 re: supplemental authority (12/21). (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
1/3/94	68	Filed Mary Kay Vyskocil's additional citations, served on 12/30/93. (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
1/3/94	69	Filed Peter S. Linden's additional citations, served on 12/30/93. (Panel) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]

DATE	NO.	PROCEEDINGS
3/2/94	70	Filed ltr dtd 3/1/94 from Henry P. Monaghan re additional citations; Attachment; served on 3/1/94. (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
3/8/94	71	Received Mary Kay Vyskocil letter dated 3/7/94 in response to aples ltr of 3/1/94 re addt'l cites (3/7). (PANEL) [92-55288, 92-55675] (sw) [92-55288 92-55675]
3/15/94	72	Filed Matsushita Electric in 92-55632 additional citations, served on 3/14/94 (PANEL) [92-55632, 92-55288, 92-55675, 92-55677] (wp) [927-55288 92-55632 92-55675 92-55677]
3/18/94	73	Received Henry P. Mongahan's letter dated 3/17/94 re: additional cites (3/17). (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
4/12/94	74	Received Henry P. Mongahan's letter dated 4/11/94 re: pet. for cert. in 92-1988 has been dismissed (4/11). (Fax to Panel) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
4/19/94	75	Received letter dated 4/18/94, from Herbert M. Wachtell, Esq., csl for defts-aples respectfully advise the ct of the 4/12/94 Judgment Order of the USCA for the Third Cir. in Sandler Assocs., L.P. v. BellSouth Corp., No. 93-7343. (PANEL), served on 4/19/94 [92-55675, 92-55288, 92-55632] (rc) [92-55288 92-55632 92-55675]

DATE	NO.	PROCEEDINGS
4/21/94	76	Received Lawrence Epstein in 92-55675 additional citations, served on 4/20/94 (PANEL) [92-55675, 92-55288, 92-55632, 92-55677] (wp) [92-55288 92-55632 92-55675 92-55677]
4/25/94	78	Received Sidney J. Sheinberg additional citations, served on 4/22/94 (PANEL) [92-55632, 92-55288, 92-55675, 92-55677] (wp) [92-55288 92-55632 92-55675 92-55677]
4/26/94	77	Received letter dated 4/25/94, from Henry P. Monaghan, Esq. re: This ltr is filed pursuant to FRAP 28(j) concerning the Supreme Ct's recent decision in Central Bank of Denver N.A. v. First Interstate Bank of Denver, N.A., No 92-854 ... (PANEL), served on 4/25/94 [92-55675, 92-55288, 92-55632] (rc) [92-55288 92-55632 92-55675]
4/29/94	79	Received Berman, Blanchard Mausner & Kindem additional citations, served on 4/28/94 (PANEL) [92-55677, 92-55288, 92-55632, 92-55675] (wp) [92-55288 92-55632 92-55675 92-55677]
5/3/94	80	Received Herbert M. Wachtell for Appellees' letter dated 5/2/94 re: additional cites (5/2). (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
7/8/94	85	Received Lew Wasserman in 92-55632 additional citations, served on 7/7/94 (PANEL) [92-55632, 92-55675, 92-55677] (wp) [92-55632 92-55675 92-55677]

DATE	NO.	PROCEEDINGS
11/10/94	86	Received Henry P. Mongahan's letter dated 11/9/94 re: additional cites (11/9). (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
11/14/94	87	Received Barry Ostrager letter dated 11/10/94 re: additional citations (11/10). (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
11/15/94	88	Received Henry P. Mongahan's letter dated 11/14/94 re: Mr. Ostrager's submission of 11/10 (11/14). (PANEL) [92-55288, 92-55632, 92-55675] (sw) [92-55288 92-55632 92-55675]
2/9/95	90	Received Sidney J. Sheinberg in 92-55632 additional citations, served on 2/8/95 (PANEL) [92-55632, 92-55288, 92-55675] (wp) [92-55288 92-55632 92-55675]
2/27/95	91	FILED OPINION: We Vacte the DC's order denying the mtn for leave to amend and remand to the DC for reconsideration of the mtn. The DC's order denying plaintiff's mtn for partial summary judgement against Matsushita on the Wasserman claim is Reversed, and the DC is instructed to grant such mtn. The DC's order granting Matsushita's mtn for summary judgement is VACATED. The DC's order dismissing plaintiff's claims against MCA Wasserman and Sheinberg for aiding and abeting is AFFIRMED. The DC's orders denying the Epstein mtn for class certification and for leave to amend their complaint are VACATED and REMANDED. (Terminated on the Merits after Oral Hearing;

DATE	NO.	PROCEEDINGS
		Reversed; Written, Signed, Published. William A. NORRIS, author; Charles E. WIGGINS; Diarmuid F. O'SCANNLAIN) FILED AND ENTERED JUDGMENT. [92-55632, 92-55675] (wp) [92-55632 92-55675]
3/13/95	92	[2750658] Filed original and 40 copies Appellee Matsushita Electric petition for rehearing with suggestion for rehearing en banc (PANEL ALL ACTIVE JUDGES) 15 p.pages, served on 3/12/95 [92-55632, 92-55675] (wp) [92-55632 92-55675]
3/13/95	93	Filed Appellant Lawrence Epstein in 92-55675 bill of costs, served on 3/10/95 [92-55675] (wp) [92-55675]
3/17/95	94	Received Appellee Lew Wasserman in 92-55632 letter dated 3/16/95 re: respectfully submit this ltr in connection with the petition for rehearing. (PANEL) [92-55632, 92-55675] (wp) [92-55632 92-55675]
3/23/95	95	Filed Appellees Matsushita Acquis, Matsushita Electric, and Matsushita Holding objection to aplts' bill of costs, served on 3/20/95 [92-55675, 92-55677] (sa) [92-55675 92-55677]
3/31/95	96	Filed Appellants Lawrence Epstein et al. reply in spt of bill of costs; served on 3/30/95 [92-55675, 92-55677] (sa) [92-55675 92-55677]
4/6/95	99	Filed order (William A. NORRIS, Charles E. WIGGINS, Diarmuid F. O'SCANNLAIN, Charles E. WIGGINS,): The

DATE	NO.	PROCEEDINGS
		petition for rehearing is denied and the suggestion for en banc is rejected. in 92-55632, 92-55675 [92-55632, 92-55675] (wp) [92-55632 92-55675]
4/12/95	100	Filed aples' FAXED mtn to stay mandate pending application for certiorari. (WAN) served on 4/12/95 [2770912] (rc) [92-55632 92-55675]
4/14/95	101	Filed Appellants Lawrence Epstein et al. oppn to appellees' motion to stay the mandate (WAN by fax); served on 4/13/95 [92-55675, 92-55632] (sa) [92-55632 92-55675]
5/4/95	102	Received atty for Appellees MCA, Inc., et al., letter dated 05/03/95 re: appellees today filed their petition for a writ of certiorari, which was submitted 63 days prior to the expiration of the time within which to file the petition under Rule 13 of the Rules of the Supreme Court... (PANEL) [92-55632, 92-55675] (hh) [92-55632 92-55675]
5/10/95	103	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 94-1809 filed on 5/3/95. [92-55675] (ah) [92-55675]
5/24/95	104	Received ltr dated 5/23/95 from Henry P. Monagham for Aplt Lawrence Epstein re:... We desire to proceed in the d.c in accordance with the orders authorized by this ct; entry of partial summary judgment and class certification; served on 5/23/95 (See ltr for complete text) (Panel) [92-55675] (gva) [92-55675]

DATE	NO.	PROCEEDINGS
6/5/95	105	Filed order (William A. NORRIS,): Upon due consideration of aples mtn for stay of the mandate pending the filing of a petition for cert, such petition to filed within 30 days of this order. It is ordered that the mtn for stay of mandate be granted. [2770912-1] in 92-55675 [92-55632, 92-55675] (wp) [92-55632 92-55675]
6/23/95	106	Received notice from Supreme Court, petition for certiorari GRANTED on 6/19/95. Supreme Court No. 94-1809. granting motion of Business Roundtable to file AC brief. (ah) [92-55675]

THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE EPSTEIN, *et al.*,)
Plaintiff,)
vs.) No. CV90-6451-R
MCA, INC., *et al.*,)
Defendants.)

[Above caption inserted]

DECLARATION OF BRADFORD CORNELL

I, BRADFORD CORNELL, declare as follows:

1. I am Professor of Finance and Director of the Security Pacific Research Foundation, Anderson Graduate School of Management, at UCLA. I received from Stanford University a B.S. degree in physics and philosophy in 1970, an M.S. degree in statistics in 1974, and a Ph.D. in financial economics in 1975. A summary of my professional qualifications and a list of my publications in academic journals is attached as Exhibit E to this declaration.

2. I have served as an expert witness in a large number of cases involving the disputed valuation of securities and other assets. In a number of these cases, I have presented testimony, either orally or by declaration, on behalf of plaintiff shareholders challenging allegedly preferential or unfair terms of securities transactions.

3. I have been retained by defendant MCA INC. ("MCA") to compare the value of the preferred stock ("Holdings Preferred") to be received by defendant Mr. Lew R. Wasserman ("Wasserman") to the $66 in cash per share of common stock offered in to the Matsushita tender offer. In

undertaking this work, I have relied on factual information regarding the Matsushita transactions including the text of the Capital Contribution and Loan Agreement and other exhibits to the Declaration of Ernest T. Kaufmann in support of plaintiff's motion for summary judgment in this action, dated December 15, 1990.

* * *

18. In light of the huge losses that interference with the transaction could impose on shareholders, economic theory suggests that aggregate shareholder wealth would be maximized if the transaction were consummated; and assuming that legal violations were established, investors could sue for money damages. Based on my experience testifying as an expert witness regarding calculation of plaintiffs' damages in a number of securities actions, I believe such damages could be calculated in a relatively straightforward manner. Shareholders will know exactly how much capital gains tax they have paid as a result of receiving the tender offer price of $66. The extent of tax deferral or elimination that the preferred stock could have created can be determined by referring to standard actuarial calculations. While a number of additional issues might have to be considered, I believe that an appropriate measure of damages for any legal violation could be readily developed without any greater expenditure of judicial resources than is normally required in securities litigation.

19. For Matsushita to issue preferred stock, instead of issuing debt and paying cash for the outstanding common shares, would impose huge costs on Matsushita because preferred dividends, unlike interest payments, are not tax deductible. To estimate these costs I assume, based on the Offer to Purchase dated November 30, 1990, that Matsushita planned to finance the transaction by using $1 billion of its internal funds and issuing $5.2 billion in debt. For simplicity, I assume that the average cost of this debt will be 8.75 percent, the same as the yield on the preferred stock. Because Matsushita intends to raise the funds by issuing commercial paper, this assumption is conservative. Yields on the highest rated commercial paper are currently below 8.5 percent.

Furthermore, Matsushita has the highest credit rating and can raise funds both in the United States and Japan to refinance the commercial paper when it matures.

20. Assuming that the corporate tax rate is 34 percent, the annual tax cost for Matsushita from issuing preferred stock rather than debt is $154,700,000. The present value of this annual tax cost is computed using the after-tax cost of funds for horizons of 5, 8 and 15 years. As shown in Exhibit D, the present values are $655,660,000 for 5 years, $969,268,000 for 8 years and $1,524,822,000 for 15 years.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Los Angeles, California, on December 26, 1990.

/s/

Bradford Cornell

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE MANUEL J. REAL,
CHIEF JUDGE PRESIDING

LAWRENCE EPSTEIN,)
Plaintiff,)
vs.) No. CV90-6451-R
MCA, INC., *et al.*,)
Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

TUESDAY, SEPTEMBER 3, 1991

10:00 A.M.

GEORGE A. HAAS, CSR, INC.
OFFICIAL COURT REPORTER
438 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012
(213) 613-1228

* * *

[8]

The Epstein plaintiffs objected to the settlement in Delaware and said they would not participate in any way in those proceedings.

MR. KAUFMANN: I don't know what that means, your Honor.

There was no appearance at the hearing on behalf of the class plaintiffs. So there was no objection presented to the Court. There is no class.

THE COURT: There was notice given to the class.

MR. KAUFMANN: That's correct.

THE COURT: In Delaware.

MR. KAUFMANN: That's correct.

THE COURT: Okay.

MR. KAUFMANN: That correct. But nothing was approved, so nothing happened.

MR. OSTRAGER: I'd be happy to provide the Court with the proceedings from Delaware with regard to your Honor's request, the Delaware proceedings.

I think it's fair to say it ceased to be prosecuted because the Delaware judge said there was no basis for the state law claims which were being prosecuted in Delaware, because it is perfectly permissible under Delaware law for Mr. Wasserman to have sold his stock in exchange for preferred shares to

[9]

Mashushita.

The Delaware action is not being prosecuted in any way. There was notice sent out to the class in Delaware. Nobody other than these plaintiffs has come forward and requested anything of the Mashushita defendants. I think, with respect to what Mr. Kaufmann in addressing the Court has made clear, the fundamental problem with this case as a proposed class action is that none of these plaintiffs demonstrate the fact of injury and they are certainly not representative of anybody else in the world. So their claims are not typical.

Passing the question of whether these plaintiffs are adequate representatives, because they absolutely have refused in any way to respond to any of the discovery the defendants

have propounded, passing that issue, your Honor, what happened here is that Mashushita made an arrangement with Mr. Wasserman and then made a tender offer to the world at large. There are approximately 7,800 MCA shareholders who had an opportunity to participate in the tender offer. They exchanged their MCA shares of stock for cash and stock worth $71, at a time when the stock was trading for $34 a share. And the $71 is higher than the historic high of MCA shares.

* * *

[14]

THE COURT: The motion for class certification is denied.

Prepare the order, counsel.

MR. MAUSNER: Thank you.

MR. OSTRAGER: Thank you, your Honor.

MR. KAUFMANN: Thank you.

o0o

I certify that the foregoing is a true and correct transcript from the record of proceedings in the above-entitled matter.

/s/ 9/5/91

GEORGE A. HAAS, CSR DATE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE EPSTEIN, JOHN LINDER, JANE ROCKFORD, as trustee of the Michael J. Rockford Trust, MAURICE KARLIN, RUTH KARLIN, BETH ANN KARLIN and BERT P. KARLIN, on behalf of themselves and all others similarly situated,	)	CV-90-6451-R
	)	*CLASS ACTION*
Plaintiffs,	)	CONSOLIDATED AMENDED COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS
v.	)	
MCA INC., MATSUSHITA ACQUISITION CORP., MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., MATSUSHITA HOLDING CORPORATION, SIDNEY J. SHEINBERG, and LEW R. WASSERMAN,	)	*JURY TRIAL DEMANDED*
Defendants.	)	

Plaintiffs for their Consolidated Amended Complaint allege upon information and belief, except as to those allegations which pertain to the named plaintiffs and counsel, as follows:

JURISDICTION AND VENUE

1. This is a class action which arises under Sections 10(b), 14(d), and 14(e), and 20 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. Sections 78j(b), 78n(d), 78n(e), and Rules 10b-13 (17 CFR § 240.10b-13) and 14d-10 (CFR, § 240.14d-10) promulgated thereunder by the Securities and Exchange Commission. Jurisdiction is founded on Section 27 of the Exchange Act, 15 U.S.C. Sec.78aa.

2. Certain of the defendants reside in this district and have their principal places of business here. Many of the acts and transactions constituting the violations of law complained of occurred in this district.

THE PARTIES

3. The plaintiffs herein were common stockholders of MCA and are members of the class as hereinafter defined, having owned shares of MCA common stock until at least November 30, 1990. Plaintiffs thereafter duly tendered or caused to be duly tendered all such shares in response to the Offer to Purchase pursuant to the Tender Offer complained of herein. Such tender of plaintiffs' MCA stock was not an acquiescence in any of the wrongs complained of herein. The other stockholders of MCA, including plaintiffs and excluding defendant Lew Wasserman ("Wasserman"), one David Geffen ("Geffen"), and defendant Sidney Sheinberg ("Sheinberg"), are hereinafter referred to as the "other stockholders".

4. Defendant MCA Inc. ("MCA") was at all relevant times a publicly held company whose common stock was listed and traded on the New York Stock Exchange. MCA is incorporated under the laws of the State of Delaware and has its principal offices in Universal City, California. MCA has no properties or employees in Delaware and Delaware citizens owned only a nominal amount of MCA's common stock. Prior to the Tender offer complained of, MCA had about 7,800 stockholders and about 77,700,000 shares of common stock outstanding. MCA is a diversified leisure and entertainment company and a major provider of movies and television programs and theatrical films. MCA's other interests include the Universal Studio's Tour in California, recorded music, retail and mail order merchandising, and book publishing.

5. Defendant Wasserman was and is the Chairman of the Board and Chief Executive Officer of MCA, owned about 4,953,992 shares of MCA's stock (6.7%), and may have been deemed to have had shared voting and investment power in about 18.2% of MCA's stock.

6. Defendant Sheinberg was and is President and Chief Operating Officer of MCA and owned about 1,179,635 shares of MCA's stock.

7. Wasserman and Sheinberg, and each of them, controlled MCA's dealing with Matsushita and benefitted directly from these dealings with Matsushita through their control of MCA.

8. Defendants Matsushita Acquisition Corporation ("Matsushita Acquisition") and Matsushita Holding Corporation ("Matsushita Holding") are Delaware corporations formed by defendant Matsushita Electric Industrial Corporation, Ltd. ("Matsushita") (hereinafter sometimes, collectively, as the "Matsushita companies" or "Matsushita"), a Japanese corporation, for the purpose of making a Tender Offer for the stock of MCA and thereafter acquiring MCA by merger. Matsushita Acquisition was the wholly owned subsidiary of Matsushita Holding and Matsushita Holding is, in turn, the wholly owned subsidiary of Matsushita.

CLASS ACTION ALLEGATIONS

9. Plaintiffs bring this action as a "(b)(3)" class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all persons similarly situated, namely, the other stockholders of MCA (excluding, however, any defendants herein; any directors, officers, employee, partners, agent, advisors or representatives of any defendant; any relative (by blood or marriage) of any defendant; and any trust for the benefit of any of the foregoing), who owned MCA common stock on or after November 26, 1990 and tendered such shares pursuant to the Offer to Purchase the common stock of MCA that was the subject of a Tender Offer (which was publicly announced by MCA and Matsushita on November 26, 1990) by defendant Matsushita through its wholly owned subsidiaries, including defendant Matsushita Acquisition, and defendant Matsushita Holding, for all the common stock of MCA. Members of the class are so numerous that joinder of all members is impracticable in that over 77,700,000 shares of the common stock of MCA were subject to the Tender Offer,

of which about 97% were purchased on December 29, 1990 in and pursuant to the Tender Offer.

10. Questions of fact and law common to the members of the class exist and predominate over any questions affecting only individual members of the class. Among the questions of law and fact common to the class are:

(a) whether in and pursuant to the Matsushita Tender Offer, the other stockholders of MCA: (i) were given the same right as Wasserman, Geffen, and Sheinberg to elect among each of the types of consideration offered in and pursuant to the Tender Offer; and (ii) have been given the highest type of consideration paid to any security holder in and pursuant to the Tender Offer.

(b) whether the purchase of, and the arrangement by the Matsushita companies to purchase, the shares of MCA common stock owned by Wasserman and Sheinberg were otherwise than pursuant to the Matsushita Tender Offer.

(c) whether such Tender Offer violated SEC Rules 10b-13 (prohibiting other purchases during Tender Offer) and 14d-10 (the best price rule); (d) whether the Matsushita Tender Offer has damaged plaintiffs and the members of the class.

11. The claim of the plaintiffs is typical of the claims of the class as all class members sustained injury and damages arising out of the defendants' acts and transactions alleged herein.

12. The plaintiffs will fairly and adequately protect the interests of the class and have retained counsel competent and experienced in class and federal securities litigation to further insure such protection.

13. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since the class is so numerous and its membership so widespread that joinder of all members is impractical. Furthermore, as individual damages may be relatively small, the

expense and burden of non-class litigation may very well make it impossible for many members otherwise to redress their wrongs.

FACTUAL BACKGROUND OF WASSERMAN'S SPECIAL ARRANGEMENT

(a) *The Tender Offer And Wasserman's Special Arrangement Were Simultaneously Negotiated.*

14. On September 4, 1990, Matsushita expressed its interest, through an agent, in acquiring MCA to Wasserman and Sheinberg. On or about September 25, 1990, it was publicly announced that Matsushita and MCA were engaged in discussions for MCA's acquisition.

15. Negotiations were conducted throughout the week of November 19, 1990. Wasserman and Sheinberg negotiated on behalf of themselves and MCA. The same lawyers represented both MCA and Wasserman and Sheinberg throughout negotiations.

16. As a condition to Matsushita making a Tender Offer for MCA, Matsushita insisted that it simultaneously be assured of acquiring Wasserman's and Sheinberg's MCA shares and that Wasserman and Sheinberg amend their existing employment agreements to assure their continuity in the management of MCA.

17. In the negotiations, Matsushita insisted that it would consummate the purchase of Wasserman's MCA shares only after it was assured that its Tender Offer for all of MCA's common shares would succeed. Wasserman insisted that Matsushita promise that it would not purchase any shares tendered in the Tender offer until after Matsushita had consummated the exchange of Wasserman's shares for Matsushita Holding's preferred stock.

18. On November 26, 1990, Matsushita and MCA publicly announced that Matsushita would acquire MCA pursuant to a Tender Offer for *all* of the outstanding shares of common stock of MCA. Wasserman's shares of MCA common stock

were not excluded from the Tender offer. To the contrary, they were expressly characterized in the Offer to Purchase, (which was dated, and formally commenced on, November 30, 1990), as shares subject to the Tender Offer. Matsushita Acquisition offered to pay in the Tender Offer $66 cash net to the other stockholders for each share of MCA stock tendered. Matsushita and MCA further stated in their announcement of the Tender Offer that an Offer to Purchase would issue no later than November 30, 1990, and would be followed by a merger of MCA and Matsushita.

19. Also on November 26, 1990, Matsushita simultaneously entered into a series of agreements in connection with and to effectuate the Tender Offer, including the following:

(a) Agreement and Plan of Merger by and among Matsushita, Matsushita Acquisition, Matsushita Holdings, and MCA providing that Matsushita Acquisition would make the Tender Offer for the outstanding shares of common stock of MCA and for the merger thereafter of MCA and Matsushita Acquisition ("Tender/Merger Agreement"); and

(b) Capital Contribution and Loan Agreement by and among Matsushita, Matsushita Holdings, and Wasserman, pursuant to which Wasserman agreed to exchange his MCA common stock for a new issue of preferred stock in Matsushita Holdings ("Wasserman Arrangement"). The amount of preferred stock to be received by Wasserman would be equal to the number of MCA shares tendered by him to Holdings times whatever price was paid in the Tender Offer. The preferred stock received by Wasserman would carry an annual dividend rate of 8.75 per cent, payable quarterly. As security for Wasserman, Matsushita agreed to contribute in cash 106% of the Tender Offer price (i.e., at a $66 Tender Offer Price, Matsushita would contribute $69.36) for every MCA share tendered by Wasserman. Wasserman's preferred stock was to be secured further by letters of credit, cash or United States obligations.

20. The Wasserman Arrangement was entered into simultaneously with the Tender/Merger Agreement, and the

Wasserman Agreement was a condition of the execution of the Tender/Merger Agreement.

21. Wasserman caused MCA to insist that, simultaneously with MCA entering the Tender/Merger Agreement, Matsushita enter into the Wasserman Arrangement.

22. Only one law firm, the same law firm, was appointed in the Tender/Merger Agreement and in the Wasserman Arrangement as the agent to receive notice for MCA and for Wasserman.

23. The only stockholders of MCA who were offered non-taxable, secured preferred stock of Matsushita Holdings for his MCA shares were Wasserman, Geffen and Sheinberg.

24. On November 25, 1990, MCA declared a dividend on share, a rate of about 1.1 per cent per annum, in contrast with the dividend rate of 8.75% paid on the non-taxable, secured preferred stock received by Wasserman.

(b) *The Tender Offer And The Wasserman Arrangement Were Integral And Mutually Conditional Parts Of A Single Plan For The Acquisition of MCA By Matsushita.*

25. The Wasserman and Sheinberg Arrangements and the transactions provided for therein (including the Offer to Purchase) were all transactions contemplated by the Tender/Merger Agreement.

26. The Tender/Merger Agreement and the Wasserman Arrangement were negotiated prior to and executed on November 26, 1990, as part of the over-all acquisition of MCA by Matsushita and were integral to, and mutually dependent and conditioned upon, each other.

27. The performance of the Wasserman Arrangement and the Tender/Merger Agreement were mutually interdependent. The Tender/Merger Agreement and the Wasserman Arrangement were negotiated simultaneously; they were executed simultaneously; the Tender Offer was publicly announced simultaneously with the public announcement of the

Arrangement to purchase Wasserman's shares; Wasserman negotiated for both the Tender/Merger Agreement and his Arrangement; neither the Tender/Merger Agreement nor the Wasserman Arrangement would have been executed without the other; the Tender Offer could not have been consummated prior to the consummation of the Wasserman Arrangement; at most, the Tender Offer was to be consummated simultaneously with the Wasserman Arrangement.

28. The Matsushita companies in the Offer to Purchase sought to purchase all of the MCA shares in a Tender Offer for "All Outstanding Common Stock of MCA".

29. The Wasserman and the Tender/Merger Agreement involved the same class of securities, namely, shares of MCA common stock, and were part of a single plan of acquisition by Matsushita of MCA.

30. The Tender Offer was subject to a condition that at least 50 percent of the MCA shares be tendered. In determining whether this condition had been satisfied, the Tender/Merger Agreement provided that shares of MCA "previously acquired by Parent [Matsushita]" are to be included in calculating the total number of shares tendered under the Tender Offer. Shares "previously acquired by Parent" included the shares of Wasserman referred to in the Wasserman Arrangement.

(c) *Timing: The Actual Purchase of Wasserman's Shares Occurred During The Tender Offer*

31. Pursuant to the Tender Offer, Matsushita Acquisition issued the Offer to Purchase dated November 30, 1990.

32. The Offer to Purchase stated that, unless Matsushita Acquisition extended the period of time for owners of MCA shares to tender their shares, shares could be tendered through 12:01 A.M., December 29, 1990, New York City time, (the "Expiration Date").

33. Following the Expiration Date, Matsushita Acquisition reserved the right to take any number of different actions

regarding the Tender Offer: it could, *e.g.*, extend the Tender Offer; amend the Tender Offer; withdraw the Tender Offer; purchase, by accepting for payment, shares tendered into the Tender Offer and terminate the Tender Offer; or consummate the Wasserman Arrangement and then consummate the acquisition of the Shares held by the members of the class.

34. Matsushita Acquisition represented in the Offer to Purchase that it would purchase the shares validly tendered in the Tender Offer by accepting tendered shares for payment.

35. The Offer to Purchase expressly stated that "purchase" of shares in the Tender Offer was to be accomplished by Matsushita Acquisition's notification to the Depositary of the acceptance of shares for payment. Thereafter, Matsushita Acquisition would "pay for" shares accepted for purchase (Offer to Purchase, p. 6; Tender/Merger Agreement, ¶ 1.01):

> "For purposes of the Offer, the Purchaser [Matsushita Acquisition] will be deemed to have accepted for payment pursuant to the Offer, and thereby have purchased, validly tendered Shares, if, as and when the Purchaser gives oral or written notice to the Depositary. . . ."

36. The Offer to Purchase did not specify any particular date or time within which Matsushita Acquisition was require to "accept for payment" and thereby purchase shares tendered. The Offer to Purchase stated:

> "Subject to the applicable regulations of the Commission and the terms of the Merger Agreement, the Purchaser expressly reserves the right, in its sole discretion, at any time and from time to time ... to ... extend the period of time during which the Offer is open and thereby delay acceptance for payment of, and the payment for, any Shares.
>
> * * *
>
> "Any extension, delay in payment, amendment or termination will be followed as promptly as practicable

by public announcement thereof, such announcement in the case of an extension to be issued no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled Expiration Date (i.e., Monday, December 31, 1990) in accordance with Rules 14d-4(c), 14d-6(d), and 14e-1(d) under the Exchange Act.

* * *

"Shares tendered pursuant to the Offer may be withdrawn at any time prior to the Expiration Date and, unless theretofore accepted for payment by the Purchaser pursuant to the Offer, may be withdrawn at any time after January 28, 1991" (Offer to Purchase, pp. 5, 9).

37. The terms of the Wasserman Arrangement expressly provided that Wasserman's Shares were to be purchased before those of all other holders.

38. The Offer to Purchase stated that:

"The Parent and Holding have agreed in the [Wasserman Arrangement] that, *unless the transactions contemplated by the [Wasserman Arrangement] have been consummated*, neither Parent nor [Matsushita] Holding will authorize, cause or allow the purchase of Shares in the Offer. . ." (Offer to Purchase, pp. 3, 14, 31, emphasis added).

39. Section 5(a) of the Wasserman Arrangement accordingly stated (in relevant part):

"Each of MEI [Matsushita] and the Corporation [MCA] ... hereby covenants and agrees that, *unless and until* the Transactions have been consummated in accordance with the terms hereof, neither MEI nor the Corporation will authorize, cause or allow the purchase of any shares of MCA Common Stock pursuant to the Offer (as such term is defined in the Merger Agreement). . ." (emphasis added).

40. The Wasserman Special Arrangement thus contemplated an elapse of time between Matsushita's acceptance for payment and its payment for Shares other than Wasserman's, that is, between acceptance for payment and consummation of the tender offer by payment. Pursuant to the Wasserman Special Arrangement, Wasserman's Shares were to be exchanged tax-free during that elapse.

SHEINBERG'S SPECIAL ARRANGEMENT

41. Simultaneously with the execution of the Merger Agreement, Matsushita entered into a special Tender Agreement with Sheinberg in which Sheinberg agreed to tender his MCA stock pursuant to Matsushita's Tender Offer at the ostensible Tender Offer price of $66 per share.

42. In connection with entering into the Merger Agreement and as a condition to Matsushita's willingness to enter into the Merger Agreement, Sheinberg's employment agreement with MCA was amended on November 26, 1990. In ostensible connection with entering into such amended employment agreement, MCA paid Sheinberg the sum of $21,000,000.

43. Though ostensibly paid for other reasons, the sum of $21,000,000 constituted the payment of extra consideration to Sheinberg for his MCA stock (at least $16 per share) that he tendered to Matsushita pursuant to the Sheinberg Tender Agreement. The amount of $21,000,000 was designed to compensate Sheinberg for the income taxes that he would be required to pay in connection with tendering his MCA stock to Matsushita pursuant to the Sheinberg tender offer at the ostensible price of $66 per share.

44. Sheinberg's Special Arrangement (the payment of $21,000,000) was designed to make the sale of Sheinberg's MCA stock to Matsushita tax-free, just as Wasserman's Special Arrangement made the sale of Wasserman's MCA stock to Matsushita tax-free.

THE VIOLATIONS OF RULE 14d-10

45. SEC Rule 14d-10 provides:

"(a) No bidder shall make a tender offer unless:

* * *

"(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.

* * *

"(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, *Provided*, That:

(1) Security holders are afforded equal right to elect among each of the types of consideration offered..."

46. In the Matsushita Tender Offer, Matsushita and Matsushita Acquisition paid the other stockholders $66 per share in cash for their stock in MCA. Wasserman and Sheinberg were treated specially, differently, and more favorably than the other stockholders of MCA. Unlike the other stockholders of MCA, other than Geffen, only Wasserman and Sheinberg had the right to elect to receive for his MCA stock the preferred stock of Matsushita Holding in a tax-free exchange. And only Sheinberg received an additional payment (of $21 million) to defray his tax obligations.

47. In selling his MCA shares, Wasserman considered the tax-free preferred stock of Matsushita Holding to be consideration preferable to $66 in cash. If the taxable and tax-free consideration were truly equivalent, Wasserman would have been economically indifferent between them.

48. The Matsushita companies violated SEC Rule 14d-10 by offering and paying a type of consideration to Wasserman which was different from and of a higher value (tax-free preferred stock) than the $66 in cash being offered to the other

stockholders of MCA. Also in violation of Rule 14d-10, the other stockholders of MCA were not afforded the equal right to elect among the different types of consideration, regardless of their respective values, offered to Wasserman. Each plaintiff would have liked to enjoy his exclusively federal right to elect a type of consideration that would have defrayed his taxes. As a result, plaintiffs and the class have been damaged in an amount to be determined at trial.

THE VIOLATIONS OF RULE 10b-13

49. SEC Rule 10b-13 provides in pertinent part:

"(a) No person who makes a cash tender offer or exchange offer for any equity security shall, directly or indirectly, purchase, or make any arrangement to purchase, any such security (or any other security which is immediately convertible into or exchangeable for such security), otherwise than pursuant to such tender offer or exchange offer, from the time such tender offer or exchange offer is publicly announced or otherwise made known by such person to holders of the security to be acquired until the expiration of the period, including any extensions thereof, during which securities tendered pursuant to such tender offer or exchange offer may be the terms of such offer be accepted or rejected: *Provided, however*, That if such person is the owner of another security which is immediately convertible into or exchangeable for the security which is the subject of the offer, his subsequent exercise of his right of conversation or exchange with respect to such other security shall not be prohibited by this section.

50. The offer and payment of the preferred stock of Matsushita Holding to Wasserman in a tax-free exchange for his MCA stock and the offer and payment of an extra $21 million in cash to Sheinberg for his MCA stock violated Rule 10b-13 in that each constituted an arrangement to purchase their MCA stock, and the actual purchase thereof occurred, otherwise than pursuant to the Tender Offer from the time such

Tender Offer was publicly announced or otherwise made known to the holders of the security to be acquired until the expiration of the period, including any extensions thereof, during which securities tendered pursuant to such Tender Offer may be by the terms of such Tender Offer have been accepted or rejected.

51. The Matsushita companies' purchase of Wasserman's and Sheinberg's stock and the Matsushita Tender Offer were negotiated simultaneously, occurred at the same time, and each was conditioned on the other. The Matsushita companies agreed not to accept for purchase any shares in the Matsushita Tender Offer until the arrangements with Wasserman and Sheinberg were consummated. Defendants' violations of Rule 10b-13 damaged plaintiffs and the class in an amount to be determined at trial.

AIDING AND ABETTING

52. Defendants herein aided and abetted each other in the aforesaid violations of Rule 14d-10, and Rule 10b-13. Wasserman, Sheinberg and MCA caused the Matsushita companies to violate Rule 10b-13 and 14d-10 by refusing to participate in the Tender Offer unless the Matsushita companies treated Wasserman and Sheinberg specially, differently, and more favorably than the other stockholders of MCA, other than Geffen, by granting them the right in, pursuant to, and during the Tender Offer to receive the fully secured, non-taxable preferred stock of Matsushita Holding in a tax-free exchange, and also by offering and paying an extra $21 million to Sheinberg to defray his taxes.

53. As heretofore pleaded, defendants Wasserman and Sheinberg were also control persons of MCA with respect to the wrongs alleged within the meaning of Section 20 of the Exchange Act.

54. After the consummation of the Tender Offer on December 29, 1990, Matsushita acquired all of MCA on January 3, 1991, by a second-step merger in which Matsushita Acquisition was merged into MCA with the result that MCA

became the wholly owned subsidiary of Matsushita Holding which, in turn, is the wholly owned subsidiary of Matsushita.

55. As a result of the foregoing, plaintiffs and the class have been damaged in an amount to be determined at trial.

WHEREFORE, plaintiffs, on behalf of themselves and the other members of the class herein, demand judgment against defendants, and each of them, jointly and severally:

(1) Certifying this action as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure;

(2) Certifying plaintiffs as the class representatives;

(3) Awarding plaintiffs and the members of the class the damages, plus interest, that they have sustained by virtue of the improper and unlawful Tender Offer, or a cash premium to defray their taxes;

(4) Requiring plaintiffs and the members of the class the damages, plus interest, that they have sustained by virtue of the improper and unlawful Tender Offer;

(5) Awarding plaintiffs and the members of the class the costs of this suit, including reasonable attorneys' fees, accountants' and experts' fees and other disbursements; and

(6) Granting such other and further relief as the Court may deem appropriate.

Dated: April 22, 1991

KAUFMAN MALCHMAN
KAUFMANN & KIRBY
2049 Century Park East, Suite 1100
Los Angeles, California 90067
Telephone: (213) 277-4004

By: /s/
Ernest T. Kaufmann
Attorneys for Plaintiffs

Of Counsel:

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KAUFMAN MALCHMAN KAUFMANN
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919 Third Avenue
New York, NY 10022

JURY DEMAND

Plaintiffs respectfully demand a trial by jury.

KAUFMAN MALCHMAN
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By: /s/
Ernest T. Kaufmann
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE EPSTEIN, et al., Plaintiffs, v. MCA INC., MATSUSHITA ACQUISITION CORP., MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., MATSUSHITA HOLDING CORPORATION, SIDNEY J. SHEINBERG, and LEW R. WASSERMAN, Defendants.	CASE NO. CV-90-6451-R ANSWER OF DEFENDANTS MATSUSHITA ACQUISITION CORP., MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD. AND MATSUSHITA HOLDING CORPORATION TO CONSOLIDATED AMENDED COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS

Defendants MATSUSHITA ACQUISITION CORP., MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., and MATSUSHITA HOLDING CORPORATION (collectively, "Answering Defendants") hereby answer the Consolidated Amended Complaint for Violations of Federal Securities Laws (the "Complaint"), filed by plaintiffs Lawrence Epstein, John Linder, Jane Rockford, Maurice Karlin, Ruth Karlin, Beth Ann Karlin, and Bert P. Karlin (collectively, "Plaintiffs") in the above-entitled action, as follows:

JURISDICTION AND VENUE

1. Answering Defendants deny each and every allegation of paragraph 1.

2. Answering Defendants deny the allegations of paragraph 2, except as follows: Answering Defendants are informed and believe and, based thereon, allege that Defendants Wasserman and Sheinberg reside in this district, and that Defendant MCA has its principal place of business in this district.

THE PARTIES

3. Answering Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 3, and, basing their denial on that ground, deny the allegations of paragraph 3, except as follows: Answering Defendants are informed and believe and, based thereon, allege that some or all of the Plaintiffs tendered shares of MCA stock in response to the Tender Offer.

4. Answering Defendants deny the allegations of paragraph 4, except as follows: Answering defendants admit that MCA is incorporated under the laws of the State of Delaware and has its principal offices in Universal City, California.

5. Answering Defendants admit the allegations of paragraph 5.

6. Answering Defendants admit the allegations of paragraph 6.

7. Answering Defendants deny each and every allegation of paragraph 7.

8. Answering Defendants admit the allegations of paragraph 8.

CLASS ACTION ALLEGATIONS

9. Answering Defendants deny the allegations of paragraph 9, except as follows: Answering Defendants admit that Plaintiffs purport to bring this action as a class action.

10. Answering Defendants deny each and every allegation of paragraph 10.

11. Answering Defendants deny each and every allegation of paragraph 11, and specifically deny that Plaintiffs, or any member of any purported class, sustained any injury whatsoever.

12. Answering Defendants deny each and every allegation of paragraph 12.

13. Answering Defendants deny each and every allegation of paragraph 13, and specifically deny that Plaintiffs, or any member of any purported class, sustained any injury whatsoever.

14. Answering Defendants admit the allegations of paragraph 14.

15. Answering Defendants deny each and every allegation of paragraph 15.

16. Answering Defendants admit that the making of the Tender Offer was conditioned upon Wasserman's separate commitment to sell his shares in a distinct transaction, that they desired to have Wasserman and Sheinberg continue in the management of MCA. Except as expressly so admitted, Answering Defendants deny each and every allegation of paragraph 16.

17. Answering Defendants deny the allegations of paragraph 17, except as follows: Answering defendants admit that the consummation of the Contribution Agreement was conditioned on the acceptance for payment of shares pursuant to the Offer to Purchase.

18. Answering Defendants deny each and every allegation of paragraph 18.

19. Answering Defendants deny the allegations of paragraph 19, except as follows: Answering Defendants admit that the Merger Agreement and the Contribution Agreement were entered into on November 26, 1990 and that the terms of those Agreements are as set forth therein and not otherwise.

20. Answering Defendants deny the allegations of paragraph 20, except as follows: Answering Defendants admit that the Contribution Agreement and Merger Agreement were entered into on the same day and that the Merger Agreement was conditioned on the execution of the Contribution Agreement.

21. Answering Defendants deny each and every allegation of paragraph 21.

22. Answering Defendants deny the allegations of paragraph 22, except as follows: Answering Defendants admit that Wachtell, Lipton, Rosen & Katz was the law firm designated to receive a copy of any notice sent to MCA or Mr. Wasserman.

23. Answering Defendants deny each and every allegation of paragraph 23.

24. Answering Defendants deny the allegations of paragraph 24, except as follows: Answering defendants admit and allege that on November 25, 1990 MCA declared a dividend on its common stock.

25. Answering Defendants deny the allegations of paragraph 25, except as follows: Answering Defendants admit that the Merger Agreement references both the Contribution Agreement and the Tender Agreement between Matsushita Electric Industrial Co., Ltd. and Mr. Sheinberg.

26. Answering Defendants deny each and every allegation of paragraph 26.

27. Answering Defendants deny each and every allegation of paragraph 27.

28. Answering Defendants deny the allegations of paragraph 28, except as follows: Answering Defendants admit and allege that terms of the Offer to Purchase are as set forth therein and not otherwise.

29. Answering Defendants deny the allegations of paragraph 29, except as follows: Answering Defendants admit that

the Contribution Agreement and the Merger Agreement both pertained to the same class of securities.

30. Answering Defendants deny the allegations of paragraph 30, except as follows: The terms of the Offer to Purchase and the Merger Agreement are as set forth therein and not otherwise.

31. Answering Defendants deny the allegations of paragraph 31, except as follows: Answering Defendants admit that Matsushita Acquisition Corp. disseminated the Offer to Purchase dated November 30, 1990.

32. Answering Defendants deny the allegations of paragraph 32, except as follows: The terms of the Offer to Purchase are as set forth therein and not otherwise.

33. Answering Defendants deny each and every allegation of paragraph 33.

34. Answering Defendants deny the allegations of paragraph 34, except as follows: Answering Defendants admit that the terms of the Offer to Purchase are as set forth therein and not otherwise.

35. Answering Defendants deny the allegations of paragraph 35, except as follows: Answering Defendants admit that the terms of the Offer to Purchase are as set forth therein and not otherwise.

36. Answering Defendants deny the allegations of paragraph 36, except as follows: Answering Defendants admit that the terms of the Offer to Purchase are as set forth therein and not otherwise.

37. Answering Defendants deny each and every allegation of paragraph 37.

38. Answering Defendants deny the allegations of paragraph 38, except as follows: Answering Defendants admit that the terms of the Offer to Purchase are as set forth therein and not otherwise.

39. Answering Defendants deny the allegations of paragraph 39, except as follows: Answering Defendants admit that the terms of the Contribution Agreement are as set forth therein and not otherwise.

40. Answering Defendants admit that "acceptance for payment" and "payment" are distinct events. Wasserman received the preferred stock after the expiration of the Tender Offer Period (i.e., after the shares were accepted for payment). Except as expressly so admitted, Answering Defendants deny each and every allegation of paragraph 40.

41. Answering Defendants deny the allegations of paragraph 41, except as follows: Answering Defendants admit that Matsushita entered into a Tender Agreement with Mr. Sheinberg.

42. Answering Defendants deny the allegations of paragraph 42, except as follows: Answering Defendants admit that Mr. Sheinberg entered into an amended employment agreement on November 26, 1990.

43. Answering Defendants deny each and every allegation of paragraph 43.

44. Answering Defendants deny each and every allegation of paragraph 44.

45. Answering Defendants deny the allegations of paragraph 45, except as follows: Answering Defendants admit and allege that the language of SEC Rule 14(d)-10 includes the language alleged in paragraph 45.

46. Answering Defendants deny each and every allegation of paragraph 46.

47. Answering Defendants deny the allegations of paragraph 47, except as follows: Answering Defendants are informed and believe and, based thereon, allege that Wasserman considered the preferred stock preferable based upon his individual tax planning and estate needs.

48. Answering Defendants deny each and every allegation of paragraph 48, and specifically deny that Plaintiffs and/or any purported class member were damaged in any amount.

49. Answering Defendants deny the allegations of paragraph 49, except as follows: Answering Defendants admit and allege that the language of SEC Rule 10(b)-13 is as set forth therein and not otherwise.

50. Answering Defendants deny each and every allegation of paragraph 50.

51. Answering Defendants deny each and every allegation of paragraph 51.

AIDING AND ABETTING

52. Answering Defendants deny each and every allegation of paragraph 52.

53. Answering Defendants deny the allegations of paragraph 53, except as follows: Answering Defendants incorporate paragraphs 5 and 6 hereof as if set forth in full.

54. Answering Defendants deny the allegations of paragraph 54, except as follows: Answering Defendants admit that Matsushita acquired all of MCA on January 3, 1991 by a second-step merger in which Answering Defendant Matsushita Acquisition was merged into MCA and MCA became the wholly-owned subsidiary of Answering Defendant Matsushita Holding.

55. Answering Defendants deny each and every allegation of paragraph 55, and specifically deny that Plaintiffs and/or the purported class were damaged in any amount.

FIRST AFFIRMATIVE DEFENSE

56. The Complaint fails to allege facts sufficient to state any claim upon which relief can be granted against Answering Defendants, or any of them.

SECOND AFFIRMATIVE DEFENSE

57. There is no private right of action under the statutes and regulations on which Plaintiffs and the alleged class purport to bring suit.

THIRD AFFIRMATIVE DEFENSE

58. All privately-negotiated arrangements between Answering Defendants, Wasserman and Sheinberg were fully disclosed at or before the commencement of the Tender Offer. Plaintiffs, with knowledge of these disclosures, tendered their shares pursuant to the Tender Offer. As a result, Plaintiffs have waived their right to assert each and every claim for relief contained in the Complaint.

WHEREFORE, Answering Defendants pray for judgment against Plaintiffs as follows:

1. That no class be certified and that this action be immediately dismissed;

2. That Plaintiffs take nothing by reason of this action; and

3. For such other and further relief as the Court deems just and proper.

DATED: May 20, 1991

GREENBERG, GLUSKER, FIELDS,
CLAMAN & MACHTINGER

By: /s/
ROBERT S. CHAPMAN
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MATSUSHITA ACQUISITION
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MATSUSHITA HOLDING CORP., and
MATSUSHITA ELECTRIC INDUS-
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE EPSTEIN, on behalf of himself and all others similar situated, Plaintiff, v. MCA Inc., et al., Defendants.	CASE NO. CV-90-6451-R CASE NO. CV 91-0336-R (Consolidated Cases) *Class Action* Pre-Trial Order
WALTER MINTON, Plaintiff, v. MCA Inc., et al., Defendants.	Pre-Trial Conference: Date: January 27, 1992 Time: 10:00 a.m. Place: Courtroom 8

Following pre-trial proceedings, pursuant to Rule 16, F.R. Civ. P. and Local Rule 9,

IT IS ORDERED:

1. THE PARTIES ARE:

Putative Class Plaintiffs:

Lawrence Epstein, John Linder, and Jane Rockford as Trustee of the Michael J. Rockford Trust, on behalf of themselves and all others similarly situated. (Matsushita objects to designation of any plaintiffs as class plaintiffs on the ground that no class has been certified and states that on April 1 and September 3, 1991 the court denied motions to certify a class.)

Individual Plaintiff:

Walter Minton

David Minton and Andrew Minton will file a motion to intervene in this action.

Defendants:

Matsushita Electric Industrial Co., Ltd. ("MEI"), Matsushita Acquisition Corp. and Matsushita Holding Corp. (collectively "Matsushita").

Each of these parties has been served and has appeared. All Matsushita defendants and Minton stipulate that answers by Matsushita Acquisition and Matsushita Holding to the Minton complaint are deemed to be answers by MEI to Minton's complaint. All other parties named in the pleadings and not identified in the preceding paragraphs are now dismissed without prejudice to plaintiffs' right to appeal the court's decision regarding former defendants MCA, Wasserman and Sheinberg.

The pleadings that raise the issues are:

a. Consolidated Amended Complaint filed April 22, 1991.

b. Minton's complaint filed January 17, 1991. The *Minton* action was consolidated with the previously consolidated actions on April 23, 1991.

c. Answer of the Matsushita defendants to Consolidated Amended Complaint filed May 20, 1991.

d. Answer of the Matsushita defendants to the Minton complaint filed February 27.

2. FEDERAL JURISDICTION AND VENUE ARE INVOKED UNDER Section 27 of the Securities and Exchange Act of 1934 ("the Exchange Act"), 15 U.S.C. § 78aa. Many of the acts and transactions constituting the violations of law alleged in the Consolidated Amended Complaint occurred in this district. The facts requisite to federal jurisdiction are

admitted. With respect to Plaintiffs' claim alleged under SEC Rule 10b-13, Matsushita does not admit that acts took place in this district, or facts requisite to jurisdiction, because no private right of action exists under that provision. Matsushita further states that pursuant to the terms of the Offer to Purchase, Matsushita Acquisition Corp. merged into MCA Inc. on January 3, 1991 and its existence as a separate corporate entity ended.

3. THE PARTIES ESTIMATE THAT THE TRIAL WILL TAKE 7 trial days once a jury has been empaneled.

4. THE TRIAL WILL BE TO a jury. (Class plaintiffs contend that two juries should be empaneled, one to consider putative class issues; the other empaneled to consider the issues presented by the individual suitor, Walter Minton. Matsushita contends that such an arrangement is unnecessary and unjustifiable.) At least one week prior to trial date, each counsel shall deliver to court and opposing counsel: (a) proposed jury instructions as required by local rule 13.2; and (b) any special questions requested to be put to prospective jurors on voir dire.

5. THE FOLLOWING FACTS ARE ADMITTED AND REQUIRE NO PROOF:

1. This case arises out of the acquisition of MCA in late 1990 by MEI and its affiliates, defendants herein, for cash consideration of approximately $6 billion, plus other consideration in the form of an ongoing equity interest in TV station WWOR ("Matsushita Tender Offer"). MCA securities were registered on a national exchange, and the Matsushita Tender Offer used instrumentalities of interstate commerce, the mails and the facilities of a national exchange. On or about November 26, 1990, MCA had approximately 7,800 shareholders.

2. Defendants Matsushita Acquisition Corp. and Matsushita Holding Corp. are Delaware corporations formed by defendant MEI, a Japanese corporation, for the purpose of making a tender offer for the common stock of MCA. The Merger Agreement between MEI and MCA provided that Matsushita Acquisition Corp. would make a cash tender offer

for the outstanding shares of common stock of MCA and that thereafter Matsushita Acquisition Corp. would merge with and into MCA. Upon the completion of the Tender Offer, Matsushita Acquisition Corp. was merged with and into MCA. The Merger Agreement also provided for MCA to spin-off to its shareholders pro rata the company that owns WWOR-TV. MCA continues as the surviving corporation and is a wholly-owned subsidiary of MEI.

3. MCA is a Delaware corporation having its principal place of business in Los Angeles, California.

4. Lew R. Wasserman is the Chairman of the Board of Directors and Chief Executive Officer of MCA. As of November 26, 1990, Wasserman directly owned approximately 4,953,927 shares of MCA common stock and may be deemed to have had shared voting and investment power with respect to approximately 15% of the outstanding shares of the common stock of MCA. Wasserman's basis in that stock was approximately 3 cents per share. As of September 1990, Wasserman was 77 years of age.

5. Sidney J. Sheinberg is President and Chief Operating officer of MCA. Immediately prior to the tender offer, Sheinberg owned approximately 1,179,635 shares of MCA common stock.

6. On April 18, 1990, non-party David Geffen acquired 921,914 shares of MCA Series B Participating Convertible Preferred Stock and 621,684 shares of MCA common stock in the acquisition by MCA of The David Geffen Company. Each share of preferred stock was convertible into 10 shares of MCA common stock. The underlying shares of MCA common stock were restricted as follows: approximately 25% of such shares could be sold annually over a four-year period, but sales could not give buyers more than a 2% stake in MCA. These restrictions were waived in connection with the Tender Offer.

7. Plaintiffs Lawrence Epstein, John Linder and Jane Rockford purport to bring this action individually and on behalf of a class of all persons who owned MCA stock and

tendered such stock pursuant to the tender offer announced on November 26, 1990. Class certification was denied on April 1 and September 3, 1991. Rule 23, Fed. R. Civ. P., and applicable law permit the amendment or alteration of orders respecting the issue of certification.

8. Plaintiff Walter Minton filed an individual complaint on January 18, 1991, alleging claims substantially identical to those alleged by the other Plaintiffs.

9. The *Minton* action was consolidated with the previously-consolidated actions on April 23, 1991.

10. Matsushita wanted to acquire all of MCA's stock, including Wasserman's MCA stock. Matsushita made it clear throughout the course of negotiations that it would not go forward with any acquisition transaction without the prior commitments of Wasserman, Sheinberg, and Geffen, the three largest individual holders of MCA stock, to sell their shares to Matsushita.

11. MCA retained Lazard Freres & Co. as its investment banker. MCA retained Lazard on a largely contingent arrangement whereby Lazard's fee depended upon the consummation of the transaction.

12. Matsushita retained Allen & Company as its investment banker.

13. Wasserman's exchange of his MCA stock for preferred stock in Matsushita Holding Corp. constituted a tax-free transaction that was intended to meet his individual tax planning and estate needs.

14. Defendants have never offered the right to elect a tax-free exchange to all holders of MCA common stock.

15. All MCA shareholders who tendered, including plaintiffs, sold MCA common stock.

16. Matsushita Acquisition Corp., the bidder, filed a Schedule 14D-1 with the SEC on November 30, 1990.

17. The Capital Contribution Agreement was executed by the parties thereto after 12:01 a.m. on November 26, 1990. Wasserman exchanged his MCA common stock for preferred stock in Matsushita Holding Corp. after 12:01 a.m. on December 29, 1990.

18. The Tender Agreement and Employment Agreement between Sheinberg and Matsushita were executed by the parties thereto after 12:01 a.m. on November 26, 1990. Sheinberg received a payment on December 31, 1990.

19. After 12:01 a.m., but prior to 12:05 a.m., on December 29, 1990, attorneys for Matsushita telephoned Citibank, N.A., the depositary for the Tender Offer, to determine whether over 50 percent of the shares had been validly tendered. The depositary informed Matsushita that ninety-one percent of all MCA shares were tendered by that time. At 12:05 a.m. on December 29, 1990, Matsushita accepted for payment shares tendered pursuant to the Tender offer.

20. Matsushita then accepted the tendered shares for payment by telecopying a notice of acceptance for payment to the depositary. Pursuant to the Offer to Purchase, Matsushita Acquisition Corp. paid $66 per share, net to the seller in cash, plus a Spinoff Dividend in WWOR-TV, to all MCA shareholders who tendered their shares in the Tender Offer, upon the terms and conditions set forth in the Offer to Purchase.

21. Time-Stamped receipts clearly demonstrate that the Contribution Agreement was consummated at l[illegible] a.m. on December 29, when Wasserman exchanged his MCA stock for preferred stock in Matsushita Holding Corp.

6. THE FOLLOWING FACTS, THOUGH STIPULATED, SHALL BE WITHOUT PREJUDICE TO ANY EVIDENTIARY OBJECTION:

1. MEI may be deemed to have been in control of the Delaware subsidiaries at all relevant times. The Delaware subsidiaries took no actions which were not directed by MEI.

2. In late August 1990, Matsushita authorized Ovitz, acting as Matsushita's agent, to express to Wasserman and Sheinberg Matsushita's interest in a potential acquisition of MCA.

3. On September 19, 1990, Ovitz met with Sheinberg and Lazard, MCA's investment banker, respecting Matsushita's interest in MCA. During this meeting Ovitz, as agent for Matsushita, stated that Matsushita was contemplating a price in the range of $75 to $90 per share subject to various terms and conditions.

4. Counsel for MCA negotiated Wasserman's Capital Contribution Agreement without charge to Wasserman. Wasserman negotiated for both MCA and himself. The same law firm represented MCA and Wasserman (without charge to Wasserman).

5. Lazard Freres & Co., advisors to MCA, and Allen & Company, advisors to MEI, set the terms of the preferred stock received by Wasserman in order to insure that the preferred stock was not more valuable than $66 in cash per share without taking the tax benefit to Wasserman into account.

6. Final negotiations regarding the potential acquisition of MCA by MEI, including price term, were conducted during the week of November 19, 1990.

7. It would have been more expensive for Matsushita to issue as the consideration for the acquisition preferred securities instead of cash.

8. Pursuant to the terms of the Contribution Agreement, the exchange contemplated thereby could only take place *after* Matsushita Acquisition Corp. accepted for payment shares tendered in the tender offer and that is in fact what occurred.

7. THE FOLLOWING ISSUES OF FACT, AND NO OTHERS, REMAIN TO BE LITIGATED AT THE TRIAL:

Matsushita states that no factual issues remain for trial and Matsushita is entitled to summary judgment as a matter of law. Subject to the positions advanced by the parties in

connection with the pending motions and subject to the disposition made by the Court in connection with the *in limine* motions described in paragraph 13 of this Order, the parties submit that the following issues remain for trial:

In preparing this schedule the parties present only the ultimate issues and do so without prejudice to their entitlement to offer whatever evidence they believe is relevant to such issues:

1. Was the arrangement to pay preferred stock to Wasserman "pursuant to" the tender offer?

2. Was the arrangement to pay $21 million to Sheinberg "pursuant to" the tender offer?

3. Was the preferred stock that Wasserman received in exchange for his common stock paid "during the tender offer" for purposes of Rule 14d-10?

4. Was the $21 million payment to Sheinberg paid "during the tender offer" for purposes of Rule 14d-10?

Plaintiffs contend, but the Matsushita defendants do not agree, that the following additional issues of fact also remain to be litigated:

1. Did Matsushita corrupt Wasserman or Sheinberg from their duties to obtain the maximum and highest consideration for all MCA shareholders?

2. Did it cost Matsushita more to issue the preferred stock to Wasserman than it did to finance the cash purchases of all other shares, and if so, by how much?

3. Was Matsushita unjustly enriched by its alleged violations of law, and if so, by how much?

4. Did defendants aid and abet each other?

5. Did Matsushita make misrepresentations or omissions in violation of Section 14(e)?

6. Did Wasserman receive higher consideration for his shares than other MCA shareholders?

7. Did Sheinberg receive higher consideration for his shares than other MCA shareholders? (The Matsushita defendants contend that with respect to Plaintiffs' additional issues of fact Nos. 6 and 7, whether Wasserman or Sheinberg received "higher consideration" becomes relevant if, and only if, they received higher payments which were during the tender offer period and/or pursuant to the tender offer).

8. Was the arrangement to pay preferred stock to Wasserman part of the tender offer?

9. Was the arrangement to pay $21 million to Sheinberg part of the tender offer?

10. Did the arrangement to pay preferred stock to Wasserman constitute a variance of the tender offer pursuant to Section 14(d) (7)?

11. Did the arrangement to pay $21 million to Sheinberg constitute a variance of the tender offer pursuant to Section 14(d) (7)?

8. THE FOLLOWING ISSUES OF LAW, AND NO OTHERS, REMAIN TO BE LITIGATED AT TRIAL:

1. Whether the Matsushita defendants violated Rule 14d-10 or any of the provisions of law that are alleged in the Consolidated Action?

2. What is or what are the appropriate measures of damages, if any?

Matsushita defendants contend, but Plaintiffs do not agree, that the following additional issues of law also remain to be litigated:

1. Whether there is a private right of action under the provisions of law that are alleged in the Consolidated Amended Action.

2. Whether any of the Plaintiffs has standing to prosecute this action or has suffered any legally cognizable injury?

Plaintiffs contend, but the Matsushita defendants do not agree, that the following additional issues of law also remain to be litigated:

1. Did defendants violate Rule 10b-13?

2. Did defendants violate Section 14(d) (7)?

3. Did defendants violate Section 14(e)?

4. Whether by operation of Internal Revenue Code §§ 351, 368 926 U.S.C. §§ 351, 368), the Wasserman Special Arrangement could not have been offered to all holders as an alternative to cash and still been tax-free to Wasserman unless the Matsushita acquisition entity exchanged solely voting stock for at least 80% of the outstanding shares of MCA?

5. Whether defendants corrupted Wasserman or Sheinberg from their duties to obtain the maximum and highest consideration for all MCA shareholders?

9. PLAINTIFFS CONTEND THE FOLLOWING DISCOVERY REMAINS:

a. Depositions of Simpson Thacher & Bartlett;

b. Deposition of Allen & Co.;

c. Depositions of Lazard Freres;

d. Depositions of Matsushita by authors of notes concerning Morgan Stanley valuations of MCA and by Ohashi;

e. Depositions of Adams and Rinehart;

f. Depositions of all parties' experts;

g. Production of documents by Matsushita for itself and for MCA;

h. Defendants' supplemental answers to expert interrogatories;

i. Defendants' answers to interrogatories;

j. Production of documents by Lazard Freres;

k. Further discovery concerning or arising out of the SEC investigation of matters concerning the tender offer.

(Matsushita disagrees with Plaintiffs' description of the discovery remaining to be completed and states that any deposition of Ohashi should occur in Japan, pursuant to court order.)

Matsushita contends that the following discovery from Plaintiffs remains outstanding:

(a) Production of Documents requested during depositions of the Karlin Plaintiffs, Plaintiff Rockford, Plaintiff Epstein and Plaintiff Linder (this is subject of a pending contempt motion) and Plaintiff Minton.

(b) Plaintiffs' responses to Matsushita's First Request for Production of Documents, served upon Plaintiffs on May 3, 1991;

(c) Plaintiffs' responses to Matsushita's First Set of Interrogatories, served upon Plaintiffs on May 3, 1991;

(d) Plaintiff's responses to Matsushita's First Set of Contention Interrogatories, served upon Plaintiffs on May 3, 1991;

(e) Plaintiffs' responses to Matsushita's First Set of Expert Interrogatories, served upon Plaintiffs on June 28, 1991;

(f) Plaintiffs' responses to Matsushita's revised Set of Contention Interrogatories, served upon Plaintiffs on June 28, 1991;

(g) Deposition of Plaintiff Jane Rockford;

(h) Deposition of Plaintiff Lawrence Epstein;

(i) Deposition of Plaintiff John Linder; and

(j) Deposition of Plaintiff Walter Minton.

(Plaintiffs disagree with Matsushita's description of the discovery remaining to be completed. In addition, all of the plaintiffs have been deposed. Class plaintiffs disagree that documents requested during depositions are the subject of a pending contempt motion.)

Matsushita contends the following discovery remains outstanding from Matsushita and non-parties:

(a) Deposition of Stephen E. Banner, Esq.

(b) Deposition of David Sorkin, Esq.

(c) Plaintiffs have completed the depositions of Wachtell Lipton, Allen & Co., Lazard Freres, David Geffen and Morgan Stanley. Matsushita has produced all documents responsive to Plaintiffs' discovery requests. Matsushita states that discovery from representatives of Simpson Thacher & Bartlett will proceed only after Matsushita has completed all discovery from Plaintiffs.

(Plaintiffs disagree with Matsushita's description of the discovery remaining to be completed.)

10. A PRELIMINARY JOINT EXHIBIT LIST OF THE PARTIES HAS BEEN FILED HEREWITH UNDER SEPARATE COVER AS REQUIRED BY LOCAL RULE 9.7. This list may be amended as discovery proceeds. *All exhibits may be admitted without objections, except those exhibits listed below*:

- Putative class plaintiffs and plaintiff Minton object to Defendants' Exhibits (designated in the joint exhibit list filed this date) Nos. 400 - 402 (inclusive), 406 - 421 (inclusive), 433 - 562 (inclusive), 564 - 603 (inclusive).

- Defendants object to Plaintiffs' Exhibits (designated in the joint exhibit list filed this date) Nos. 1, 5, 6, 7, 10, 16, 18, 20 - 22 (inclusive), 24 - 152 (inclusive), 156 - 160

(inclusive), 164, 265 - 302 (inclusive), 306 - 361 (inclusive). The objections are separately stated and filed herewith. In addition, the parties reserve the right to utilize all documents lodged with this Court in these consolidated proceedings to the extent permitted by the Federal Rules of Evidence.

11. EACH PARTY INTENDING TO PRESENT EVIDENCE BY WAY OF DEPOSITION TESTIMONY HAS MARKED SUCH DEPOSITION IN ACCORDANCE WITH LOCAL RULE 9.4.9 OR WILL DO SO PRESENTLY. The depositions taken herein may be used as fully as though signed pursuant to Rules 30, 32, Fed. R. Civ. P. The following deposition transcripts in addition to that designated by plaintiffs have been marked and lodged with the clerk as required by Local Rule 8.1.2 or will be lodged as soon as transcripts are available:

(a) Deposition of Lew R. Wasserman taken June 12, 1991;

(b) Deposition of Sidney J. Sheinberg taken June 19, 1991:

(c) Deposition of Paul M. Reinstein taken August 6, 1991;

(d) Deposition of Michael S. Ovitz taken August 26, 1991;

(e) Deposition of Keiya Toyonaga taken August 27, 1991;

(f) Deposition of Masahiko Hirata taken August 28, 1991;

(g) Deposition of Walter Minton taken September 5, 1991;

(h) Deposition of Herbert Allen taken September 12, 1991;

(i) Deposition of John Linder taken September 20, 1991;

(j) Deposition of Lawrence Epstein taken December 30, 1991;

(k) Deposition of Maurice J. Karlin taken September 24, 1991;

(l) Deposition of Martin Lipton, Esq. taken September 26, 1991;

(m) Deposition of Pamela Seymon, Esq. taken September 26, 1991;

(n) Deposition of Charles Cory taken November 21, 1991;

(o) Deposition of David Geffen taken December 12, 1991;

(p) Deposition of Scott Von Eschen taken October 2, 1991;

(q) Deposition of Felix Rohatyn taken October 3, 1991;

(r) Deposition of Jane Rockford taken December 5, 1991;

The parties reserve the right to supplement this list as further depositions are taken.

13. THE FOLLOWING LAW AND MOTION MATTERS AND MOTIONS *IN LIMINE* ARE PENDING OR MAY BE MADE:

A. *Plaintiffs*

1. Motion *in limine* respecting measure of damages.

2. Motion *in limine* respecting reference by defendants to other transactions.

3. Motion *in limine* to disqualify Simpson Thacher & Bartlett.

4. Motion *in limine* regarding findings concerning defendants' refusal to produce certain discovery.

5. Motion *in limine* compelling defendants to comply with outstanding document requests.

6. Renewed motion to certify the class.

7. Motion *in limine* regarding number of parties.

8. Motion to compel discovery.

9. Motion to preclude defendants' expert testimony.

10. Motion for reconsideration of defendants' protective order regarding Ohashi.

11. Motions for contempt order for failure to comply with a subpoena.

12. Minton motion to compel discovery.

13. Minton motion to intervene by David and Andrew Minton.

14. Minton motion *in limine* respecting the profits realized by Plaintiffs from the tender of MCA stock.

15. Plaintiffs reserve the right to make other motions or motions *in limine* at the appropriate time.

B. *Defendants*

The following law and motion matters and motions *in limine* are pending or contemplated:

(1) Motion for summary judgment;

(2) Motion to quash trial subpoena for Hirata;

(3) Matsushita contemplates filing a motion *in limine* to exclude any evidence relating to the following:

(a) Valuations of MCA by non-parties who were never retained by Matsushita, including, most particularly, Morgan Stanley;

(b) Pre-November 1990 price discussions;

(c) SEC investigations into possible insider trading allegations; and

(d) Matsushita reserves the right to make other motions *in limine* at the appropriate time.

14. BIFURCATION OF THE FOLLOWING ISSUES FOR TRIAL IS ORDERED: None.

15. THE FOREGOING ADMISSIONS HAVING BEEN MADE BY THE PARTIES, AND THE PARTIES HAVING SPECIFIED THE FOREGOING ISSUES OF FACT AND LAW REMAINING TO BE LITIGATED, THIS PRE-TRIAL CONFERENCE ORDER SHALL SUPERSEDE THE PLEADINGS AND GOVERN THE COURSE OF THE TRIAL OF THIS CAUSE, UNLESS MODIFIED TO PREVENT MANIFEST INJUSTICE.

Dated: January 27, 1992

/s/

United States District Judge

Approved as to form and content:

KAUFMAN MALCHMAN KAUFMANN & KIRBY
2049 Century Park East, Suite 1100
Los Angeles, California 90067
Telephone: (310) 277-4004

By: */s/*

Ernest T. Kaufmann

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By: /s/
Brian L. Edwards

Attorneys for Defendants

(Signed subject to the objections set forth in the Declaration of Paul C. Curnin Regarding Pre-Trial Conference Order dated January 21, 1992, and filed under separate cover.)

No. 92-55675

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAWRENCE EPSTEIN, et al.,

Plaintiff-Appellants,

v.

MCA, Inc., et al.,

Defendants-Appellees.

On Appeal From the United States
Court For The Central District of California

CV-90-6451-R
HONORABLE MANUEL REAL

PLAINTIFFS-APPELLANTS' MOTION UNDER 28 U.S.C. § 1657 TO SET CASE FOR ORAL ARGUMENT

For the reasons set forth in the accompanying memorandum, plaintiffs-appellants move, in accordance with 28 U.S.C. § 1657, that this and the related appeals (Nos. 92-55677 and 92-55632), which have been consolidated for argument, be scheduled for oral argument as early as practicable.

By: /s/

Henry Paul Monaghan
435 West 116th Street
New York, New York 10027
(212) 854-2644

KAUFMAN MALCHMAN
KAUFMANN & KIRBY
919 Third Avenue
New York, New York 10022
(212) 371-6600

Dated: December 10, 1992

NO. 92-55675

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAWRENCE EPSTEIN, *et al.*,

Plaintiff-Appellants,

v.

MCA, Inc., *et al.*,

Defendants-Appellees.

On Appeal From the United States
Court For the Central District of California

CV-90-6451-R
HONORABLE MANUEL REAL

DECLARATION OF HENRY P. MONAGHAN IN SUPPORT OF PLAINTIFFS-APPELLANTS' MOTION FOR EARLY ORAL ARGUMENT

I, HENRY P. MONAGHAN, declare:

I am an attorney duly admitted to practice before this Court. I am co-counsel for the Epstein appellants herein.

Attached to this declaration are a true and correct copy of

(i) the Delaware Chancery Courts' opinion in *In re MCA Inc. Shareholders Litigation*, 598 A.2d 687 (Del. Ch. 1991) (Exhibit A).

(ii) defendants' and Delaware plaintiffs' counsel second settlement agreement, dated October 22, 1992, (Exhibit B).

(iii) the Notice to the Class in the Delaware action, dated October 27, 1992, (Exhibit C).

(iv) an article by John C. Coffee, Jr., entitled *Suspect Settlements in Securities Litigation*, New York Law Journal, March 28, 1991, Page 5, col. 1 (Exhibit D).

I declare that the foregoing is true and correct under the pains and penalties of perjury.

Dated: New York, New York
December 10, 1992

/s/

HENRY P. MONAGHAN

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WALTER EPSTEIN, et al.,	)	Nos. 92-55632
Plaintiffs/Appellants,	)	92-55675 92-55677
vs.	)	DC# CV-90-6451-
	)	MLR
MCA, INC., et al.,	)	Central California
Defendants/Appellees.	)	ORDER

Plaintiffs' motion for oral argument and any response thereto shall be referred to the panel that will consider the merits of the appeal.

The plaintiffs' motion to expedite oral argument is denied. This appeal shall be calendared in due course.

The plaintiffs' motion for leave to file a 40-page optional reply brief is denied. The optional reply brief shall be filed by December 24, 1992 and shall consist of no more than 25 pages.

For the Court:

CATHY A. CATTERSON
Clerk of the Court

/s/

Lou Pearson
Deputy Clerk
Ninth Cir. R. 27-7/Appendix A,
General Orders for the United States
Court of Appeals

[File-stamped
December 17, 1992]

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FEDERAL EXPRESS

December 24, 1992

Office of the Clerk
U.S. Court of Appeals
for the Ninth Circuit
121 Spear Street
2nd Floor
San Francisco, California 94105

Re: Epstein *et al.* v. MCA Inc. *et al.*
(Docket Nos. 92-55675

Dear Sir or Madam:

We enclose our reply brief filed in accordance with the extensions of time granted by order of this court. We also enclose a copy of a letter, dated December 2, 1992, that notified opposing counsel of the clerk's granting of our oral application for an extension.

Our motion for permission to file a brief of 40 pages had been denied, as was our motion for early argument. Deputy Clerk Lou Pearson informed us that both orders were entered on her authority alone. She advised us that we could appeal to a judge of the court. She also advised us that, despite her earlier order denying our motion for 40 pages, she could, on her

own authority, grant an additional five pages on the reply brief. We see no reason to appeal at this time the clerk's denial of the motion for early argument. Obviously, we can raise the issue later, as we have observed. We now file our reply brief without the need to request my additional pages.

Sincerely,

/s/ /s/

Henry P. Monaghan
435 West 116th Street
New York, New York 10027
212/854-2644

Roger W. Kirby

Enclosure

cc: All Counsel

SUPREME COURT OF THE UNITED STATES

No. 94-1809

Matsushita Electric Industrial Co., Ltd., et al.

Petitioners

v.

Lawrence Epstein, et al.

ORDER ALLOWING CERTIORARI.

Filed June 19, 1994.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted limited to Question 1 presented by the petition.

June 19, 1995

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SEYMOUR LAZAR, et al., Plaintiffs, v. MCA INC., et al., Defendants.	)	Civil Action No. 11740
BARNETT STEPAK, et al., Plaintiffs, v. MCA INC., et al., Defendants.	)	Civil Action No. 11741
SARA NAPHTALI, et al., Plaintiffs, v. MCA INC., et al., Defendants.	)	Civil Action No. 11747

ORDER OF CONSOLIDATION

It appearing that several actions have been filed involving the same subject matter, and that the administration of justice would be best served by consolidating the actions.

IT IS, THIS 2nd day of October, 1990, ORDERED AS FOLLOWS:

1. The above-captioned actions shall be consolidated for all purposes.

2. Hereafter, papers need only be filed in Civil Action No. 11740.

3. The caption of the consolidated action shall be as follows:

IN RE MCA INC. SHAREHOLDERS LITIGATION	CONSOLIDATED Civil Action No. 11740

4. The law firms of ABBEY & ELLIS, 212 East 39th Street, New York, NY 10016; BARRACK, RODOS & BACINE, Suite 1200, 1845 Walnut Street, Philadelphia, PA 19103; BERGER & MONTAGUE, 1622 Locust Street, Philadelphia, PA 19103; GOODKIND, LABATON & RUDOFF, 122 East 42nd Street, New York 10168; GREENFIELD & CHIMICLES, One Haverford Centre, 361 W. Lancaster Avenue, P.O. Box 100, Haverford, PA 19041-0100, KAPLAN & KILSHEIMER, 685 Third Avenue, New York, NY 10017; KAUFMAN, MALCHMAN, KAUFMANN & KIRBY, 919 Third Avenue, New York, NY 10022; KOHN, SAVETT, MARION & GRAF, P.C., 2400 One Reading Center, 1101 Market Street, Philadelphia, PA 19107; LEVIN, FISHBEIN, SEDRAN & BERMAN, 320 Walnut Street, Suite 600, Philadelphia, PA 19106; MILBERG WEISS BERSHAD SPECTHRIE & LERACH, One Pennsylvania Plaza, New York, NY 10119; LAW OFFICES OF I. STEPHEN RABIN, 685 Third Avenue, New York, NY 10017; LAW OFFICES OF ANTHONY RAHMANAN, 11 Pennsylvania Plaza, New York, NY 10001; SCHIFFRIN & CRAIG, 2020 North Halsted Street, Chicago, IL 60614; SIROTA & SIROTA, 747 Third Avenue, 32nd Floor, New York, NY 10017; STULL, STULL & BRODY, 6 East 45th Street, New York, NY 10017; WECHSLER, SKIRNICK, HARWOOD, HALEBIAN & FEFFER, 555 Madison Avenue, 18th Floor, New York, NY 10022; THE LAW OFFICES OF JOSEPH H. WEISS,

319 Fifth Avenue, New York, NY 10016; WOLF, HALDENSTEIN, ADLER, FREEMAN & HERZ, 270 Madison Avenue, New York, NY 10016; WOLF POPPER ROSS WOLF & JONES, 845 Third Avenue, New York, NY 10022; and ZWERLING, SCHACHTER & ZWERLING, 800 Third Avenue, New York, NY 10022 are hereby designated as Plaintiffs' Committee of the Whole. The law firms of ABBEY & ELLIS; BERGER & MONTAGUE; MILBERG, WEISS, BERSHAD, SPECTHRIE & LERACH; and WOLF POPPER ROSS WOLF & JONES are hereby designated as Co-Lead Counsel for Plaintiffs. The law firm of MORRIS, ROSENTHAL, MONHAIT & GROSS, P.A., First Federal Plaza, P.O. Box 1070, Wilmington, DE 19899 is hereby designated as Plaintiffs' Liaison Counsel. All pleadings and other papers shall be served upon MORRIS, ROSENTHAL, MONHAIT & GROSS, P.A. and GREENFIELD & CHIMICLES, One Rodney Square, P.O. Box 1035, Wilmington, DE 19899.

5. Plaintiffs' Co-Lead Counsel shall set policy for plaintiffs for prosecution of this litigation, delegate and monitor the work performed by the attorneys for plaintiffs to ensure that there is no duplication of effort or unnecessary expense, coordinate on behalf of plaintiffs the initiation and conduct of discovery proceedings, and provide supervision and coordination of the activities of plaintiffs' counsel.

6. All documents previously filed and served to date in any of the cases consolidated herein are deemed and adopted and are a part of the record in the consolidated action. The Complaint filed in Civil Action No. 11740 is hereby designated as the Complaint in the consolidated action. Defendants need not respond to the Complaints filed in any of the other constituent actions.

/s/

Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE:	:	CONSOLIDATED CIVIL
MCA INC. SHAREHOLDERS LITIGATION	:	ACTION NO. 11740

AMENDED STOCKHOLDERS' CLASS ACTION COMPLAINT

Plaintiffs allege upon information and belief, except for paragraph 5 which is alleged upon knowledge, as follows:

NATURE OF THE ACTION

1. This is a stockholders' class action on behalf of the public stockholders of MCA Inc. ("MCA" or the "Company") who are being deprived of the opportunity to maximize the value of their MCA common stock in the sale of the Company. This Amended Stockholders' Class Action Complaint (the "Amended Complaint") is being filed pursuant to the Stipulation and Order governing scheduling in this action. The Amended Complaint incorporates plaintiffs' allegations against defendants as set forth in a letter dated December 4, 1990, from Steven Schulman, Esquire, to Herbert M. Wachtell, Esquire.

2. As more fully described herein, on November 26, 1990, defendants Lew R. Wasserman ("Wasserman") and Sidney Jay Sheinberg ("Sheinberg"), together with other members of MCA senior management and their advisors, entered into a merger agreement which provides for the sale of MCA to Matsushita Electric Industrial Co. ("Matsushita"), a Japanese corporation and one of the world's largest consumer electronic manufacturers (the "Merger"). As part of the

Merger, Matsushita commenced a tender offer to MCA's stockholders on November 30, 1990, for all of MCA's common stock at a price of $66 per share plus a purportedly pro rata distribution of the stock of one of MCA's businesses, WWOR-TV (the "Tender Offer"). The Tender Offer expires by its terms on December 29, 1990.

3. The decision by defendants to sell the Company imposes upon them fundamental fiduciary duties to disclose all material facts to the Company's stockholders with complete candor and to seek the best possible transaction for the stockholders through implementation of bidding mechanisms or the exploration of strategic alternatives designed to assure the maximization of stockholder value. MCA's board of directors (named as defendants in this action) have been and are breaching their fiduciary duties to the stockholders of MCA by, *inter alia*, (1) failing adequately to disclose to MCA's stockholders material facts necessary to make an informed decision about the Tender Offer and Merger, including substantial conflicts of interest involving defendants Wasserman and other MCA senior management and MCA's Board of Directors, the future status of WWOR-TV, prior market contacts from other potential purchasers of MCA, and other material information, (2) giving preferential treatment to defendant Wasserman by paying him preferred stock rather than the consideration paid to the public stockholders, and (3) negotiating and entering the Merger agreement on a preferential basis with Matsushita and failing to implement the auction or other bidding mechanisms or market check procedures necessary to assure that the stockholders receive the highest possible price in connection with the change in control.

4. The Merger is designed by the Individual Defendants and other members of MCA senior management to entrench the officers and directors of MCA in the management and control of MCA and to advance their own personal interests at the expense of MCA's public stockholders. Indeed, the Merger represents the culmination of a series of steps which the Individual Defendants have taken to deter and ultimately thwart any unsolicited expression of interest to acquire the Company which they have not initiated or approved. In

furtherance of these efforts, the Individual Defendants over the last several years have adopted and utilized an array of defensive weapons, including (a) a "poison pill" created for the purpose of discouraging unsolicited takeover attempts and usurping from MCA's stockholders the power to accept or reject any proposal for the purchase of their shares; (b) lucrative severance agreements (or "golden parachutes") to several executive officers of the Company; and (c) a "staggered" board intended to deter any unsolicited acquisition efforts.

5. The Individual Defendants and other members of MCA senior management with whom they are allied are attempting to transfer the entire ownership and control of the Company's outstanding shares at a price substantially below their fair and intrinsic value, in order to gain valuable personal benefits from Matsushita in the Merger. As shown herein, the Merger and Tender Offer are timed to take advantage of a recent serious decline in the market value of MCA's common stock resulting from a temporary and reversible decline in revenues and net income caused *inter alia*, by the Company's expansion plan and a temporary market decline due to world events, including the Persian Gulf crisis. The long-term benefits which will result from this plan vastly exceed the immediate costs and burdens involved in developing these business opportunities and demonstrate that Matsushita in conjunction with the Individual Defendants is attempting to appropriate for itself the future growth and profitability of this entertainment giant without providing adequate disclosure of material information and obtaining fair and adequate consideration for the MCA public stockholders.

6. Preliminary and permanent injunctive relief and other equitable remedies are necessary to protect MCA public stockholders from the immediately threatened divestiture of their equity interest in MCA under circumstances representing a gross deviation from the enhanced fiduciary responsibilities which Delaware law imposes in connection with the sale of a company or any other fundamental change in corporate control.

THE PARTIES

7. Plaintiffs are owners of shares of common stock of MCA who have been damaged and are threatened with further injury by the wrongful actions of the defendants as set forth below. They bring this action as a class action on behalf of the public stockholders of MCA.

8. Defendant MCA is a Delaware corporation that maintains its principal executive offices in Universal City, California. MCA is an international concern engaged in the production and distribution of theatrical, non-theatrical, television and home video products; licensing of merchandising rights and film property publishing rights; manufacture and distribution of recorded music and music publishing; operation of amphitheaters; manufacturing and licensing of entertainment/sports apparel, non-consumable concessions for sports/entertainment events and other music entertainment activities; retailing and mail order of gift merchandise; book publishing; television broadcasting; recreation services; and real estate development.

9. At all relevant times herein, each of the following defendants (collectively, the "Individual Defendants") were directors of MCA and/or senior officers of MCA.

a. Lew R. Wasserman is Chairman of the Board, Chief Executive Officer and a member of the Executive Committee. Wasserman's current annual salary is approximately $900,000. Wasserman also owned as of January 31, 1990 over 4.9 million shares of MCA common stock representing approximately 6.7% of the common shares outstanding. In connection with the Merger, Wasserman will receive an enhanced salary of at least $3 million annually, as well as preferred stock in Holding that will pay him a cash dividend exceeding $28 million annually.

b. Sidney Jay Sheinberg ("Sheinberg") is a Director, President and Chief Operating Officer and a member of the Executive Committee. Sheinberg's current annual salary is approximately $900,000. Sheinberg also owned as of January 31, 1990, approximately 1.3 million shares of MCA common

stock, representing approximately 1.8% of the common shares outstanding. In connection with the Merger, Sheinberg will receive an enhanced salary of over $8 million annually, plus a cash bonus of $21 million.

c. Thomas P. Pollock ("Pollock") is a Director and Executive Vice President. Pollock's current annual salary is $850,000. Pollock also owned as of January 31, 1990, 144,240 shares of MCA common stock, representing approximately .02% of the amount of common shares outstanding. As part of the Merger, Pollock will receive $16.7 million in bonuses and incentives.

d. Thomas Wertheimer ("Wertheimer") is a Director, Executive Vice President and a member of the Executive Committee. Wertheimer's current annual salary is $650,000. Wertheimer also owned as of January 31, 1990, 227,235 shares of MCA common stock, representing approximately .03% of the amount of common shares outstanding. In connection with the Merger, Wertheimer will receive $7.7 million in bonuses and incentives.

e. Charles S. Paul ("Paul") is a Director and President of MCA Enterprises, a subsidiary of MCA. In connection with the Merger, Paul will receive $12.3 million in bonuses and incentives.

f. Howard H. Baker ("Baker"), a Director, is a Partner in the law firm of Baker, Worthington, Crossley, Stansberry & Woolf. Baker's firm will receive substantial compensation from MCA for services purportedly rendered in the Tender Offer and Merger.

g. Robert S. Strauss, a Director, is a Partner in the law firm of Akin, Gump, Strauss, Hauer & Feld. Strauss' firm represented both MCA and Matsushita in connection with the Tender Offer and Merger. His firm will receive $8 million from MCA for its services purportedly rendered in connection with the challenged transaction, and on undisclosed sum for its representation of Matsushita.

h. Felix G. Rohatyn, a Director, is a General Partner of Lazard Freres & Co. ("Lazard") which served as the principal financial advisor to MCA, and delivered a "fairness opinion" in connection with the Tender Offer and Merger, for which Lazard will receive over $16.8 million in the event that a sale of the Company is accomplished.

i. Defendants Thomas V. Jones, Howard P. Allen, and Mary Gardiner Jones are each members of MCA's Board of Directors. These directors receive annual directors' compensation of $18,000, plus $18,000 per year for each committee on which they serve, and $1,500 for each directors' and committee meeting they attend.

10. Defendant Matsushita, a company organized under the laws of Japan, is one of the world's largest producers of consumer electronic and electric products with sales in fiscal 1990 of more than $37 billion. Matsushita operates 117 companies in 39 countries. Matsushita's principal executive offices are located in Osaka, Japan. Defendants Matsushita Acquisition Corp. ("Acquisition"), a Delaware corporation and a wholly-owned subsidiary of defendant Matsushita Holding Corp. ("Holding"), also a Delaware corporation, has been incorporated for the purpose of purchasing all the common stock of MCA. Under Section 6.17 of the Merger Agreement, defendants Matsushita, Acquisition and Holding submit to the personal jurisdiction of this Court.

11. All officers and directors of MCA, as a group, including the Individual Defendants, beneficially owned over 7 million shares of MCA common stock, or nearly 10% of MCA's common stock outstanding as of January 31, 1990.

12. By virtue of their positions as directors and/or officers of MCA and their exercise of control over the business and corporate affairs of MCA, the Individual Defendants have and at all relevant times had the power to control and influence, and did control and influence and cause MCA to engage in the practices complained of herein. Each Individual Defendant owed and owes MCA and its stockholders fiduciary obligations and were and are required to: fulfil their duty of

candor to the stockholders by making timely and adequate disclosures in press releases and in the materials filed with the Securities Exchange Commission ("S.E.C.") in connection with the Tender Offer and Merger, including Schedules 14D-1 and 14D-9; use their ability to control and manage MCA in a fair, just and equitable manner; act in furtherance of the best interests of MCA and its stockholders; act to maximize stockholder value; govern MCA in such a manner as to heed the expressed views of its public shareholders; refrain from abusing their positions of control; and not to favor their own interests at the expense of MCA and its stockholders. MCA has distributed the Offer to Purchase to its stockholders together with the Schedule 14D-9 and Matsushita has the right to "review and comment" upon disclosure materials of MCA in connection with the Tender Offer and Merger. Therefore, all defendants are jointly responsible for the inadequate disclosures provided to MCA stockholders in connection with the challenged transactions.

13. By virtue of the acts and conduct alleged herein, the Individual Defendants, who control the actions of the Company, are breaching their fiduciary duties to the public stockholders of MCA.

14. The Individual Defendants are sued individually as conspirators and aiders and abettors, as well as in their capacity as officers and/or directors of the Company, and the liability of each arises from the fact that they have engaged in all or part of the unlawful acts, plans, schemes or transactions complained of herein.

15. Matsushita, Acquisition and Holding are acting in concert with the Individual Defendants and are sued as conspirators and aiders and abettors of the Individual Defendants.

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of themselves and all other stockholders of MCA, or their successors in interest (the "Class"). Excluded from the Class are the defendants, members of the immediate families of the Individual

Defendants or their representatives, and directors, officers, subsidiaries, controlled affiliates, and partners of any of the defendants.

17. The action is properly maintainable as a class action for the following reasons:

a. The Class is so numerous that joinder of all members is impracticable. As of January 31, 1990, MCA had in excess of 73,000,000 shares of common stock outstanding held by thousands of stockholders of record and beneficial owners;

b. The members of the Class are scattered throughout the United States and are so numerous as to make it impractical to bring all of them before this Court;

c. There are questions of law and fact which are common to the Class and which predominate over questions affecting only individual Class members. The common questions include, *inter alia*, the following:

i) whether the Individual Defendants have breached their fiduciary obligations to plaintiffs and the other members of the Class by failing and refusing to attempt in good faith to maximize stockholder value in the sale of the Company;

ii) whether the Individual Defendants have breached the fiduciary and other common law duties including the duty of complete candor owed by them to plaintiffs and the other members of the Class; and

iii) whether defendants have subjected MCA to potential liability under S.E.C. Rules 14d-7, 14d-10, 10b-13 and 13e-3, promulgated under the Securities and Exchange Act of 1934 (the "Exchange Act"), thereby causing MCA to expend and waste corporate assets that could have been distributed for the benefit of MCA's public stockholders; and

iv) whether plaintiffs and the other members of the Class are being or will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of damages.

18. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. The claims of plaintiffs are typical of the claims of other members of the Class and plaintiffs have the same interests as the other Class members.

19. A class action is superior to other available methods for the fair and efficient adjudication of this action, and no unusual difficulties are likely to be encountered in the management of this class action. The likelihood of individual Class members prosecuting separate claims is remote.

20. Defendants have acted and are about to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole.

BACKGROUND

21. MCA is a recognized leader in the entertainment industry operating in six major business segments: film entertainment (51% of 1989 revenues of $3.4 billion); music entertainment (23%); retail and mail order (8%); book publishing (6%); broadcasting and cable (5%); and other operations (7%). MCA has had outstanding financial results in recent years as evidenced by the growth in sales and earnings as summarized below:

MCA Five Year Summary
(all figures in thousands except growth rate and EPS)

Year	***Sales***	***Net Income***	***EPS(S)***
1989	3,382,344	191,773	2.62
1988	2,900,339	164,916	2.26
1987	2,479,105	137,254	1.82
1986	2,230,018	150,904	1.97
1985	2,021,078	149,959	2.02
5-Year Growth Rate (%)	13.70	6.30	6.70

22. In June 1989, the Company opened its new Universal Florida theme park which will operate in direct competition with the Disney World facility in Orlando, Florida. MCA also scored a recent coup when it paid the equivalent of $550 million in preferred stock for Geffen Records, a leading member of the recording industry. It also owns WWOR-TV, an independent New York area television station, and has a 50% stake in the cable USA Network.

23. On July 19, 1990, defendant Wasserman announced that for both the three and six months ended June 30, 1990, the Company reported record second quarter and first half revenues and higher net income than the comparable periods of 1989. Revenues for the second quarter of 1990 were $949,942,000 compared to $828,256,000 for 1989. Net income was $44,781,000 or $0.54 per share compared to $41,972,000 or $0.58 per share for 1989. The weighted average number of common and common equivalent shares used in the determination of earnings per share for the three months ended June 30, 1990 and 1989 was 83,245,493 and 73,142,872, respectively. The 1990 calculations of earnings per share include the equivalent common shares for the Company's Series B convertible preferred shares issued during the second quarter of 1990 in connection with the Geffen acquisition.

24. Similarly, revenues for the first half of 1990 were $1,862,888 compared to $1,531,602 for 1989. New income was $76,359,000 or $0.96 per share compared to $69,313,000 or $0.95 per share for 1989.

25. MCA's film entertainment group reported record revenues and operating incomes in the second quarter of 1990. The music entertainment group also reported record revenues and operating income for the second quarter of 1990. Broadcasting and cable reported record revenues and operating incomes in the second quarter of 1990 due to improved results for WWOR-TV and the USA Network. Retail and mail order had higher revenues in 1990 due to higher retail store sales.

26. The fiscal 1989 financial statements show that MCA's financial condition is also strong. The current ratio (current assets: current liabilities) was above 2X as it had been during the two years previous while the Company's debt/equity ratio decreased from 0.79 to an even more conservative 0.65.

27. Recognizing the strength of MCA's assets and the quality of its operations, industry financial analysts have conservatively valued MCA at up to $100 per share. However, MCA, like other media and entertainment companies, has recently suffered a serious decline on Wall Street. Since July, 1990, the market value of the stock has declined from a high of approximately $64 per share to as low as $34 per share immediately prior to the announcement of a prospective transaction with Matsushita. The decline in the value of the stock was accelerated by reports concerning problems incident to the opening of the vast new theme park in Orlando, Florida, the perceived dilution caused by the issuance of substantial additional shares to the Geffen interests in connection with the Geffen acquisition, and the overall market decline attributed to the Persian Gulf crisis. These factors are temporary and reversible and do not detract from the impressive long-term strengths of the Company.

28. On September 25, 1990, the *Wall Street Journal* reported that Matsushita was negotiating with MCA over an acquisition transaction involving the entertainment giant. Both MCA and Matsushita thereafter publicly confirmed that representatives of the respective companies were involved in negotiations regarding a prospective change in control transaction. According to published reports, the widespread perception among major stock traders and financial analysts was that an announcement of a sale transaction was imminent. Reflecting these expectations, the market price of MCA common stock surged dramatically upward immediately upon announcement of these events from $34 1/2 per share to close at $54 per share on September 25, 1990, a net increase of 57%.

29. On September 26, 1990, plaintiffs filed their original Shareholders' Class Action Complaint (the "Original

Complaint"). The Original Complaint sought injunctive and declaratory relief, as well as money damages, against an improper transaction between MCA and Matsushita.

30. On November 26, 1990, MCA entered into an Agreement of Merger with Matsushita. Under the Merger Agreement, Acquisition on November 30, 1990 commenced the Tender Offer to purchase all of MCA's common stock at a price of $66.00 per share in cash. On the same day, defendants filed Schedules 14D-1 and 14D-9 with the S.E.C. and distributed to MCA's stockholders the Offer to Purchase. The Tender Offer expires on December 29, 1990. The Merger Agreement also calls for MCA to spin off to its stockholders, on a purportedly pro rata basis, its interest in the television station WWOR-TV.

31. In addition, the principals to the transaction have negotiated and entered into a series of other transactions and agreements, including the following:

a. The Option Agreement, which provides for MCA to grant to Matsushita an irrevocable option to purchase 16,880,788 shares of MCA stock at a price of $71 per share in the event that (1) a third party commences a tender offer for 50% or more of MCA's stock, (2) a third party acquires 33% or more of MCA's stock, or (3) the MCA Board withdraws or modifies its recommendation or approval of the Merger;

b. The Capital Contribution Agreement, which provides for defendant Wasserman to contribute 4,953,927 shares of MCA stock to Holding in exchange for Holding preferred stock. Under this agreement, Wasserman, unlike the public stockholders of MCA, will receive consideration for his MCA stock in a tax-free transaction;

c. The Tender Agreements, which provide for defendants Sheinberg and Geffen to tender their MCA stock into the Tender Offer; and

d. The Distribution Agreement, which provides for MCA to spin off WWOR-TV to its stockholders. The Distribution Agreement also calls for WWOR-TV to adopt a

"share purchase rights plan," or poison pill, acceptable to defendants following the Merger.

32. As detailed in paragraph 9, above, the Merger also provides for substantial payments and other benefits for certain of the Individual Defendants that will not be shared by MCA's public stockholders. For example, defendant Sheinberg will receive a $21 million cash bonus, plus a reported $9.6 million in "incentive awards." Sheinberg also will receive an enhanced salary of $8.6 million per year under the Merger Agreement, up from approximately $900,000 under his prior contract with MCA. Defendant Wasserman will receive an enhanced salary of at least $3 million per year under the Merger Agreement, up from less than $900,000 under his prior contract with MCA.

33. Additionally, defendant Wasserman, unlike the public stockholders of MCA, also will receive new preferred stock in Holding in order to reap the substantial, additional benefits of a tax-free transaction. MCA's public stockholders do not have the opportunity to participate in any such tax-free exchange. Defendant Wasserman's Holding preferred stock will pay a dividend of $28.6 million per year, up from the over $3 million he currently receives annually. Finally, other senior officers of MCA will receive "bonuses" and "incentives" totalling almost $55 million in the Merger, as described above in paragraph 9.

34. The Tender Offer and Merger are timed to take advantage of a temporary downturn in the price of MCA common stock. MCA's stock price has recently declined primarily due to the initial problems experienced in opening the Florida theme park, the dilutive impact of the Geffen acquisition, and temporary world economic conditions. Shortly prior to announcement of the Merger discussions in September, 1990, MCA stock traded at approximately $34 to $35 per share. However, in 1989, the stock traded at prices considerably above the $66 Tender Offer price. The Tender Offer and Merger will occur at a time when the Company is poised to enjoy significantly increased earnings in the future, as the

operations of the Florida theme park are stabilized and the beneficial impact of the Geffen acquisition is realized.

35. The intrinsic value of the Company materially exceeds the $66.00 per share and WWOR-TV stock value which Matsushita will pay in the Tender Offer. Given the Company's potential growth and profitability, the underlying strength of its assets, growth plans, resources and accessibility to public and private financing, the price to be paid to the public stockholders is unfair and inadequate.

DEFENDANTS' BREACHES OF THEIR DUTY OF CANDOR

36. Defendants have breached and continue to breach their duties of candor to MCA's public stockholders by failing to disclose adequately material information concerning the Tender Offer and Merger. Under Section 4.06 of the Merger Agreement, MCA has the opportunity to review and comment upon Matsushita's Offer to Purchase and Schedule 14D-1. Moreover, all defendants acted in concert with and/or aided and abetted one another in filing and disseminating Matsushita's Offer to Purchase, Schedule 14D-1 and Schedule 14D-9. Finally, MCA's 14D-9 disseminated the Offer to Purchase as an exhibit thereto. Therefore, all defendants are responsible jointly for the inadequate and misleading disclosures provided to MCA's stockholders in connection with the Tender Offer and Merger.

37. Defendants have breached their duties of candor to MCA's public stockholders by failing to disclose adequately the nature and circumstances of the substantial benefits that the Individual Defendants will receive in the Merger. The Offer to Purchase and Schedules 14D-1 and 14D-9 give the misleading impression that Sheinberg's, Wasserman's and certain of the other Individual Defendants' lucrative employment and bonus agreements, as described above in paragraph 9, were imposed "as a condition to Matsushita's willingness to agree to enter the Merger Agreement. . . ." and are not substantially greater than they would be if not for the Merger (*See* Offer to Purchase; Schedule 14D-9 at 23-26). In fact,

Sheinberg's, Wasserman's and the other Individual Defendants' personal benefits from the Merger were insisted upon by MCA management as the price of its willingness to negotiate with Matsushita and are far greater than the Individual Defendants could have expected to receive in the ordinary course. Matsushita willingly agreed to pay, and encouraged the payment of, such compensation because of its expectation that this would vastly limit the independence of senior management and the MCA Board in negotiating with Matsushita and thereby save the purchaser potentially hundreds of millions or billions of dollars in acquisition costs that a fully disinterested MCA Board would have insisted upon. The portrayal of the management benefits as consistent with ordinary practice and as proceeding from the wishes of the purchaser to secure the services of the present MCA officers and directors is materially false and deceptive and calculated to present a neutral or positive impression of special arrangements, which create serious conflicts of interest that the defendants have attempted to conceal.

38. Defendants also have breached their duties of candor by failing adequately to disclose their intention to retain *de facto* control over WWOR-TV following the spinoff of that entity to MCA's stockholders in the Merger. The Offer to Purchase and Schedules 14D-1 and 14D-9 falsely suggests that WWOR-TV could be put up for sale on the basis of competitive bidding following the Merger. In fact, the provision in the Merger for a board of directors following the spinoff that will be dominated by MCA management and the planned implementation of a shareholder rights plan, or "poison pill" have both the purpose and effect of entrenching in the control of WWOR-TV the MCA designees, and preventing a sale of the television station on the basis of effective and competitive bidding.

39. Additionally, defendants have breached their duty of candor to MCA's public stockholders by failing adequately to disclose significant and material information about the various operating segments of MCA that has been concealed from the public stockholders but provided exclusively to Matsushita. The Schedule 14D-9 creates the false impression that

such information would not be "material" to MCA's stockholders. In fact, such concealed information would be of significance to MCA stockholders who must make an informed election between exchanging their shares in the Tender Offer or Merger and a statutory appraisal proceeding. Defendants' failure to disclose both the material nature of this information and the information itself constitute breaches of defendants' duty of candor.

40. Defendants also have breached their duty of candor by failing to disclose prior market contacts between MCA and other potential purchasers which would indicate to MCA's stockholders the level of market interest MCA could attract in an open and effective auction. The Offer to Purchase and Schedules 14D-1 and 14D-9 falsely indicate that "no party other than Matsushita had made or expressed any interest in making a proposal to acquire the Company . . . ." (*See*, e.g., Schedule 14D-9 at 40). Defendants have failed to disclose that interested purchasers were rebuffed by defendants when such potential purchaser refused to grant the Individual Defendants the generous personal benefits granted by Matsushita. Such information would materially assist MCA's stockholders in assessing the fairness and adequacy of the Tender Offer and Merger.

41. Finally, defendant Wasserman's equity participation in Holdings following the Merger demonstrates that the parties are engaged in a form of "going private" transaction subject to the disclosure requirements of S.E.C. Rule 13e-3, promulgated under the Exchange Act. However, defendants have not made the required filings with the S.E.C. which would be required to be made were they proceeding in accordance with Rule 13e-3. In particular, the Lazard investment banker's "book" has not been made publicly available as would otherwise be the case were the parties proceeding in accordance with the requirements of Rule 13e-3. Material information regarding the fairness and adequacy of the proposed transaction has thus been withheld from the investing public. Delaware fiduciary duties of complete candor incorporate the requirement to make available in a "going private" transaction the materials required by Rule 13e-3.

DEFENDANTS' BREACHES OF THEIR FIDUCIARY DUTIES TO MAXIMIZE STOCKHOLDER VALUES AND ACT IN THE BEST INTERESTS OF THE STOCKHOLDERS

42. Defendants owe fundamental fiduciary obligations of complete candor to the Company's stockholders in connection with the Tender Offer and Merger. Defendants also owe fundamental fiduciary obligations to the Company's stockholders to take all necessary and appropriate steps to maximize the value of their shares in implementing such a transaction. In addition, the Individual Defendants have the responsibility to act independently so that the interests of MCA's public stockholders will be protected, and to conduct fair and active bidding procedures or other mechanisms for checking the market to assure that the highest possible price is achieved. Further, the directors of the Company must adequately insure that no conflict of interest exists between defendants' own interests and their fiduciary obligations to maximize stockholder value or, if such conflicts exists, to insure that all such conflicts will be resolved in the best interest of the Company's public stockholders.

43. In breach of their fiduciary duty, a majority of the MCA Board of Directors have financial or other conflicting interests in the success of the transaction. Senior management are eligible to receive bonus and compensation payments immensely greater than they would otherwise receive under their present contracts. Mr. Wasserman has negotiated a very favorable agreement in connection with the Merger which will insulate him from costly taxes. Defendant Baker faces a significant conflict of interest because of substantial payments made to his law firm in connection with the Merger. Defendant Strauss similarly faces a substantial conflict of interest because of the dual representation by his law firm of Matsushita and MCA and in fact participated in the deliberations of the Board regarding the Tender Offer and Merger, although abstaining from voting on the Merger. Defendant Rohatyn cannot claim any objectivity with respect to his support for the Merger because of the multi-million dollar fees which Lazard -- the principal financial advisor in the Merger and a

firm in which Rohatyn is a General Partner -- will receive in the event that the Merger is consummated. In addition, Lazard's "fairness" opinion is unreliable because of the agreement which Lazard has arranged, by which Lazard receives multi-million dollar advisory fees contingent upon the completion of the acquisition transaction.

44. MCA represents a highly attractive acquisition candidate which has drawn the interest of such international business enterprises as General Electric Co., and Capital Cities/ABC Inc., both of which were reportedly willing to pay in excess of $90 per share in an acquisition transaction. Additionally, MGM/Pathe Communications Corp. appears to have been rebuffed in its efforts to negotiate a higher offer with defendants. The preferential treatment accorded Matsushita by the Individual Defendants for their own gain has deprived and will continue to deprive the MCA public stockholders of the very substantial premiums which proper exposure of the Company to the market could have provided.

45. The Individual Defendants have breached their fiduciary and other common law duties owed to plaintiffs and the other members of the Class in that they have not and are not exercising independent business judgment and have acted and are acting to the detriment of the Class in order to benefit themselves and other members of MCA senior management acting in concert with Matsushita.

46. As reported in the September 25, 1990 *Wall Street Journal* article prior to the merger agreement, "any transaction would have to have the blessing of Wasserman," MCA's Chairman of the Board. Defendant Wasserman, who is 77 years old, owns almost 7% of the outstanding common shares of the Company. In addition, the *Wall Street Journal* article reported that Matsushita "wants to keep MCA management in place" in conjunction with an acquisition transaction. More importantly, the lucrative salary, bonus and "incentive" agreements between Matsushita and the Individual Defendants as well as the preferential treatment accorded defendant Wasserman have deprived the Individual Defendants of their ability to judge independently and fairly the value of MCA.

As a result, the Merger is not the product of arm's length negotiations and is not based upon any independent evaluation of the current value of MCA's common stock, assets or business. Rather, the Merger and Tender Offer price is being fixed arbitrarily by Matsushita in conjunction with MCA senior management as part of their unlawful plan and scheme to obtain the entire ownership of the Company's assets and business at an unfair and inadequate price.

47. Contrary to normal and established procedures in implementing such transactions, defendants have apparently failed to created any "Special Committee" of fully independent and disinterested directors who will act objectively and in the sole and ultimate best interests of all stockholders in effectuating the sale of the Company.

48. Under the terms of the Capital Contribution Agreement, defendant Wasserman will receive preferred stock in a subsidiary of Matsushita in exchange for his holdings of MCA shares. The purpose of this agreement is to afford defendant Wasserman tax-free treatment not available to other shareholders, and to save Wasserman millions of dollars in taxes that would be due if he received cash. By providing defendant Wasserman with this preferential treatment in the acquisition, and by assuring that Wasserman received greater value per share than that available to other MCA shareholders, the Individual Defendants have breached their duty of loyalty to MCA and its stockholders and all defendants have effected illegal and impermissible discrimination among MCA's stockholders and the shares they hold.

49. The Individual Defendants have also failed to engage in a sufficient "market check" necessary to assure the fairness and adequacy of the Tender Offer and Merger terms. Since the commencement of discussions and negotiations with Matsushita in or about September 1990, MCA has been prevented from soliciting any competitive expressions of interest or purchase proposals. In addition, the parties have clearly rejected any post-agreement "market check" by virtue of their refusal to extend the Tender Offer beyond the minimum required under federal regulations, by their adoption of the Option

Agreement which provides Matsushita with a "lock-up" option, and by agreeing to break-up fees amounting to $125 million, among other restraints that prevent any genuine auction from developing. MCA remains prohibited from soliciting competitive expressions of interest and, while MCA may respond to any competitive proposals which are made, the limited time available and obvious allegiances of management and the Board of Directors inevitably will discourage genuine competitive bids from emerging.

50. Certain other aspects of the transaction confirm the fundamental failure of the MCA directors to obtain the best possible transaction unaffected by conflicts of interest. In order to facilitate the transaction with Matsushita, defendants have arranged to spinoff the WWOR-TV subsidiary to stockholders rather than investing the additional time and effort necessary to auction this subsidiary at the highest possible price and thereby generate maximum proceeds for the shareholders. In addition, the Distribution Agreement contemplates that the spun off company will adopt a "poison pill" in form acceptable to Matsushita and MCA. If this subsidiary were genuinely to the independent, it would be unnecessary to incorporate such provision in the agreements. The implementation of the poison pill under these circumstances is intended to present the emergence of an open and effective auction for the television station and to assure that those persons chosen by the principals to manage the station will confront no challenge to their control.

51. Moreover, the MCA directors have agreed to an arrangement whereby the Yosemite subsidiary will be marketed at some later time and its earnings prior to sale will be placed in escrow for the benefit of the National Park Service. The escrowing of the Yosemite profits for an indeterminate period is clearly calculated to assuage public sentiment concerning the transaction and allow the defendants to achieve their personal agenda in consummating the sale under the agreed terms. A sale to another purchaser may not engender such public sensitivities and under those circumstances, the value of the Yosemite subsidiary would unquestionably be reserved for the shareholders.

52. Defendants also have failed or refused to take those steps necessary to ensure that the Company's stockholders will receive maximum value for their shares of MCA stock. Defendants failed to announce any active auction or open bidding procedures best calculated to maximize stockholder value in selling the Company.

53. In addition, despite the possible interest of several companies in acquiring MCA, defendants favor an acquisition of the Company by Matsushita which expressed a firm desire to maintain the Individual Defendants and other members of MCA senior management (with whom they are allied) in their positions of control subsequent to the consummation of the Merger. As a result, the Individual Defendants are acting to entrench themselves in their offices and positions and to receive enhanced and substantial salaries and perquisites, all at the expense and to the detriment of the Company's public stockholders.

54. The Individual Defendants were induced to sell MCA to Matsushita for a grossly inadequate price by Matsushita's payment of the above described substantial payments and benefits to the Individual Defendants, at a time when MCA's common stock was temporarily under-rated as a result of, *inter alia*, the Company's expansion plan and a temporary decline of the stock market due to world events. As a result, the Individual Defendants are faced with substantial conflicts of interest between the best interests of MCA's stockholders and their own financial gains and continued employment.

55. By the acts, transactions and courses of conduct alleged herein, the Individual Defendants, other than MCA, individually and as part of a common plan and scheme in breach of their fiduciary duties and obligations, have and will unfairly deprive plaintiffs and the other members of the Class of their investment in MCA and to ensure continuance of their positions as directors and officers and enhanced compensation, all to the detriment of the Company and its stockholders. The Individual Defendants have been engaged in a wrongful effort to entrench themselves in their offices and positions of

control and prevent the acquisition of the Company except on terms which would further their own personal interests.

56. These events represent the culmination of an entire plan and scheme by which the Individual Defendants have sought to isolate themselves from any acquisition of the Company except under circumstances directly serving their personal interests at the expense of MCA's public stockholders. Previously, in July 1987, MCA implemented a stockholder rights plan (or "Poison Pill") designed to deter unsolicited takeover bids by making any hostile takeover attempt prohibitively expensive. The Poison Pill was subsequently modified on March 1, 1988 and December 6, 1988, to lower the trigger points at which the plan is activated and otherwise intensify its deterrent impact, thus magnifying the Individual Defendants' power to resist unwanted third party offers.

57. The Individual Defendants have also caused or taken advantage of other entrenchment devices designed to repel any takeover effort not endorsed by them. Among other things, MCA's certificate of incorporation provided for a staggered Board of Directors. Further, the Company entered into lucrative severance agreements ("Golden Parachutes") with five executive officers of MCA, including defendants Wasserman and Sheinberg. The Golden Parachutes provided for cash payments of million of dollars triggered by, among other things, any change in control of the Company. These Golden Parachutes were designed to make an unfriendly acquisition of the Company economically disadvantageous.

58. In addition, defendant Wasserman exercised voting and investment power as to approximately 6 million MCA shares in addition to the approximately 5 million shares which he personally owned. These additional shares were held in a series of trusts and charitable associations over which Wasserman served as a trustee or otherwise exercised control. Aggregating the shares owned directly by Wasserman with those over which he exercised voting and investment powers as a trustee or in similar capacities, the MCA directors and officers as a group beneficially owned in excess of 13 million MCA

shares, constituting approximately 18% of the outstanding common stock. Such aggregate ownership and control reposed in senior management was deliberately structured to frustrate an unwanted bidders' ability to meet the requirements of the Delaware Anti-Takeover Statute.

59. In this regard, in order to meet the requirements of the Delaware Anti-Takeover Statute, 8 Del.C. §203 (the "Delaware Act" or the "Act") for the prompt completion of a second-step "business combination", Section 203(a) requires that (i) prior to purchasing 15 percent or more of MCA common stock, any potential acquiror of the Company obtain approval from the MCA Board of Directors of the proposed "business combination;" (ii) a third party acquire in a single transaction a sufficient number of shares of MCA common stock to go from an ownership position of under 15% to one of over 85% (the "85% Exception"); and (iii) after obtaining 15%, the potential acquiror obtain the approval of the MCA Board and 66-2/3% of the other stockholders to the subsequent "business combination."

60. The ownership and control of MCA stock by the Individual Defendants and senior management therefore effectively placed under their control in excess of 15% of the Company's common stock, thereby preventing a hostile bidder from satisfying the 85% Exception. This had the intended and inevitable effect of frustrating an unsolicited bidders' efforts to acquire the Company and predictably shifts corporate power to the hands of entrenched management.

61. By virtue of the acts and conduct alleged herein, the Individual Defendants, who control the actions of the Company, have carried out a preconceived plan and scheme to place their own personal interest ahead of the interests of MCA's public stockholders and thereby entrench themselves in their offices and positions within the Company. The Individual Defendants have violated their fiduciary duties owed to plaintiffs and the Class, including their fiduciary duties of complete candor, in that they have not and are not exercising independent business judgment and have acted and are acting

to the detriment of MCA's public stockholders for their own personal benefit.

62. The Individual Defendants have breached their fiduciary duties by reason of the acts and transactions complained of herein, including their decision to effect the Merger with Matsushita without making any effort to obtain the best offer possible, by affirmatively attempting to prevent a better offer, and by failing to disclose material facts to MCA's stockholders.

63. As a result of the actions of the Individual Defendants, plaintiffs and the other members of the Class have been and will be damaged in that they have not and will not receive their fair proportion of the value of MCA's assets and business and/or have been and will be prevented from obtaining a fair and adequate price for their shares of MCA's common stock.

64. Defendants have subjected MCA to potential liability under the federal securities laws, thus causing MCA to expend and waste corporate assets that could otherwise be utilized for the benefit of MCA's public stockholders.

65. Plaintiffs seek preliminary and permanent injunctive relief and declaratory relief preventing defendants from inequitably and unlawfully depriving plaintiffs and the Class of their right to realize a full and fair value for their stock at a substantial premium over the market price, and to compel defendants to carry out their fiduciary duties of candor and to maximize shareholder value in selling MCA.

66. Plaintiffs and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiffs be fully protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

67. Unless enjoined by the Court, defendants will continue to breach their fiduciary duties owed to plaintiffs and the other members of the Class, and/or aid and abet and participate in such breaches of duty, and will consummate the

Tender Offer and the Merger with inadequate disclosure and at an inadequate and unfair price, or upon inequitable terms, all to the irreparable harm of plaintiffs and the other members of the Class.

68. Plaintiffs and the Class have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment as follows:

(a) Declaring this to be a proper class action and certifying plaintiffs as representatives of the Class;

(b) Ordering the Individual Defendants to carry out their fiduciary duties to plaintiffs and the other members of the Class by announcing their intention to:

i) cooperate fully with any person or entity, having a *bona fide* interest in proposing any transaction which would maximize stockholder value, including, but not limited to, a buyout or takeover of the Company;

ii) undertake an appropriate evaluation of MCA's worth as a merger/acquisition candidate;

iii) take all appropriate steps to enhance MCA's value and attractiveness as a merger/acquisition candidate;

iv) take all appropriate steps to effectively expose MCA to the marketplace in an effort to create an active auction for MCA;

v) act independently so that the interests of MCA's public stockholders will be protected;

vi) adequately ensure that no conflicts of interest exist between the Individual Defendants' own interest and their fiduciary obligation to maximize stockholder value or, if such conflicts exist, to ensure that all conflicts are resolved in the best interests of MCA's public stockholders; and

vii) adequately disclose the personal interests of and benefits to the Individual Defendants in the Merger;

viii) declaring that defendants and each of them have committed or aided and abetted a gross abuse of

trust and have breached their fiduciary and other duties to plaintiffs and the other members of the Class;

ix) preliminary and permanently enjoining defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating or closing the proposed transaction which will irreparably harm plaintiffs and the Class;

x) in the event the proposal is consummated, rescinding it and setting it aside, or awarding rescissory damages if it cannot be set aside;

(c) Ordering the Individual Defendants, jointly and severally, to account to plaintiffs and the Class for all damages suffered and to be suffered by them as a result of the acts and transactions alleged herein;

(d) Awarding plaintiffs the costs and disbursements of this action, including a reasonable allowance for plaintiffs' attorneys' and experts' fees; and

(e) Granting such other further relief as may be just and proper under the circumstances.

Dated: December 14, 1990

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In re MCA, INC. Shareholders Litigation
Civ. A. No. 11740

Court of Chancery of Delaware,
New Castle County.

Submitted: Jan. 30, 1991.
Decided: April 22, 1991.

HARTNETT, Vice Chancellor.

The Court must consider whether to approve the proposed settlement of this purported class action pursuant to Chancery Rule 23(e). Plaintiffs ("Settling Plaintiffs") in this action join the defendants in urging the approval of the settlement. The Objectors, who are not parties in this action but are the plaintiffs in a pending action in Federal Court in California, object to that part of the settlement which would bar their federal claims and request the opportunity to opt-out of the Class or to have the federal claims excluded from the settlement.

After reviewing the settlement, the Court finds that the State claims being compromised have little or no merit and therefore no value. The value of the settlement to the Class is also minimal. The claims asserted in the Federal Court, however, have at least arguable merit and therefore have significant value. This Court, on balance, finds, in its business judgment, that it would be unfair to bar the federal claims and therefore the settlement cannot be approved in its present form.

I. PROCEDURAL BACKGROUND

This action was commenced in this Court as a purported class action on behalf of the stockholders of MCA, Inc., a Delaware corporation ("MCA"), on September 26, 1990 -- one day after the public announcement that Matsushita Electric Industrial Co. Ltd. ("Matsushita") and MCA were negotiating a possible acquisition of MCA by Matsushita. The complaint named MCA and its directors as defendants. Although no agreement between MCA and Matsushita existed at that time, breaches of fiduciary duties were claimed on the

grounds that there was a failure by the directors of MCA to implement a market check procedure to ensure maximum shareholder value.

On November 26, 1990, MCA and Matsushita announced that they had entered into a Merger Agreement. Pursuant to the Merger Agreement, a wholly-owned subsidiary of Matsushita would make a cash tender offer for all MCA outstanding shares for $66 per share, conditioned upon the tender of at least 50% of the outstanding shares and the spinoff of a MCA wholly-owned subsidiary, known as Pinelands. The spinoff asset was a corporation that owned a television station that Matsushita was prohibited by federal law from acquiring. According to the Merger Agreement, 100% of Pinelands' stock was to be distributed to the MCA shareholders *pro rata* in the form of a stock dividend prior to the completion of the tender offer.

On December 3, 1990, an action was filed in the United States District Court for the Central District of California as *Epstein v. MCA, Inc., et al.*, No. CV-90-6451-R, ("the *Epstein* action"). It was alleged in that suit that Matsushita's tender offer involved a special deal for Lew R. Wasserman, MCA's chairman and chief executive officer. The Wasserman Agreement, apparently entered into contemporaneously with the MCA Merger Agreement, provided that immediately following completion of the tender offer, Mr. Wasserman would surrender his MCA stock in exchange for shares of preferred stock of the Matsushita subsidiary. The complaint further alleged that the Wasserman Agreement was in violation of Section 14(d)(7) of the Federal Securities Exchange Act of 1934 ("Federal Securities Act") (15 U.S.C. §78n(d)(7)) and SEC Rules 14d-10 and 10b-13. The *Epstein* action named Matsushita as a defendant claiming alleged securities laws violations and also named MCA and Mr. Wasserman as defendants because they allegedly aided and abetted Matsushita.

On December 14, 1990, plaintiffs in this Delaware action filed an Amended Complaint and at their request a preliminary injunction hearing was scheduled for December 18, 1990. The Amended Complaint added an allegation of a

failure to disclose a substantial conflict of interest involving defendants Wasserman, MCA management and its directors, based on a claim that Mr. Wasserman received preferential treatment. Matsushita was also named as a defendant in this Delaware action for the first time because it allegedly aided and abetted MCA in a breach of fiduciary duty by entering into a special deal with Wasserman. The Amended Complaint, however, did not challenge the Wasserman Agreement on the grounds that it constituted a breach of the Federal Securities Act as had been asserted in the federal court in California.

On December 18th, the parties in this Delaware action filed a Stipulation and Agreement of Compromise and Settlement (the "Settlement Agreement"). The settlement provided for a dismissal of the Delaware action with prejudice and for the release of all the claims of any member of the Class arising out of the transaction, including claims asserted in the federal *Epstein* action. On that same day, this Court provisionally certified the Class pursuant to Chancery Rule 23(b)(2), and set a hearing on on the proposed settlement for January 30, 1991.

The Matsushita tender offer was successfully completed about December 29, 1990 after the stock of the Pinelands subsidiary had been distributed to the MCA shareholders. About January 4, 1991, MCA merged into and with a Matsushita subsidiary.

On January 23, 1991, David Minton and Andrew Minton (the "Objectors") filed their objection to the proposed settlement insofar as it purports to bar the claims they have individually asserted in the federal suit in California.

II. LAW OF SETTLEMENTS

The law of Delaware strongly favors voluntary settlement of contested issues. *Nottingham Partners v. Dana*, Del.Supr., 564 A.2d 1089, 1102 (1989); *Polk v. Good*, Del.Supr., 507 A.2d 531, 535 (1986); *Rome v. Archer*, Del.Supr., 197 A.2d 49 (1964).

In the settlement of a class action, the Court's role is to protect the Class members by balancing the fairness and reasonable of the proposed settlement, with the policy favoring settlements. *Nottingham* at 1102; *Barkan v. Amstead Indus.*, Del.Supr., 567 A.2d 1279, 1283 (1989). The Court, in reviewing a settlement, should not decide the merits of the issues, but must consider the nature of the claims, the defenses asserted, and the factual and legal circumstances, and then apply its own business judgment to decide if the settlement is intrinsically fair. *Id.; Polk*, 507 A.2d at 536; *Nottingham*, 564 A.2d at 1102.

In determining if a proposed settlement should be approved, this Court must review various factors including the strengths and weaknesses of the asserted claims, the value of the benefit conferred on the Class by the settlement, and the risks, expenses, and delays of litigation. *Neponsit Investment Co. v. Abramson*, Del.Supr., 405 A.2d 97 (1979). The Court must especially balance the value of all the claims being compromised against the value of the benefit to be conferred on the Class by the settlement. *Sullivan v. Hammer*, Del. Ch., C.A. No. 10,823-NC, Hartnett, V.C. (Aug. 14, 1990), slip op. at p. 14, 1990 WL 114228 *app. pending* (upholding a settlement because there was adequate benefit to the class.)

III. EFFECT OF THE RELEASE

It is not disputed that this Court may enter a judgment in connection with the settlement of a class action that results in the release of both state law claims and exclusively federal claims if the claims arise from the same factual predicate, even if the state court could not dismiss or adjudicate the federal claims. *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 460 (2nd Cir. 1982); *In re Mobile Communications Corporation of America, Inc., Consolidated Litigation*, Del. Ch., C.A. No. 10,627-NC *et seq.*, 1991 WL 1392 Allen, C. (Jan. 7, 1991) (approving a settlement of both state and federal claims as fair.) As a practical matter, a so-called "global settlement" is often necessary if any settlement at all will occur. *See, Raskin v. Birmingham Steel Corp.*, Del. Ch., C.A.

No. 11,365-NC, Allen, C. (Dec. 4, 1990), slip op. at 18, 1990 WL 193326 (holding that the settlement was not fair.)

When a state court settlement of a class action releases all claims which arise out of the challenged transaction and is determined to be fair and to have met all due process requirements, the class members are bound by the release or the doctrine of issue preclusion. Class members cannot subsequently relitigate the claims barred by the settlement in a federal court. *Nottingham Partners v. Trans-Lux Corp.*, 926 F.2d 29 (1st Cir. 1991); *Abramson v. Pennwood Investment Corp.*, 392 F.2d 759, 762 (2nd Cir.1968). A federal court is, however, free to review and determine the effect and scope of the release on the federal claims. *Nottingham Partners, supra; see also, In re Mobile, supra; Abramson, supra.*

Therefore, if this Court provides for the release of all the claims arising out of the challenged transaction, the claims which the Objectors have asserted in the federal suit will likely be forever barred.

IV. CLASS CERTIFICATION

On December 18, 1990 the Class was provisionally certified by this Court pursuant to Chancery Rule 23(b)(2), to consist of all owners of MCA common stock on September 25, 1990. At the time of the filing of the suit and on the date the settlement agreement was entered into, the complaint sought injunctive and other equitable relief, as well as monetary damages, on behalf of the Class.

The Objectors assert, however, that the federal securities law claims predominate over the state law claims and that these claims are purely money damage claims. They, therefore, assert that the Class can only be certified pursuant to Chancery Rule 23(b)(3), which allows objecting Class members to be excluded or to opt-out of the settlement.

The Objectors point out that on January 30, 1991, the day that the Settlement Hearing was held, the tender offer had been completed, the merger consummated, and the spinoff dividend had been paid. They also correctly assert that the

Settlement Agreement does not provide for any equitable relief. They, therefore, argue that no equitable remedy would have been appropriate at the tune of the Settlement Hearing. Additionally, they point out that the entire Class does not have an action for damages because only those persons who owned MCA stock on November 30, 1990 -- the day the Matsushita tender offer was commenced -- have a claim pursuant to the Federal Securities Act. 15 U.S.C. § 78n(d)(7). Because damages, if any, will vary from shareholder to shareholder, the Objectors also suggest that the Class should be certified pursuant to Chancery Rule 23(b)(3) to allow those shareholders with monetary claims to opt-out of the settlement, if they desire.

The Settling Plaintiffs and defendants counter that both the Delaware action and the *Epstein* federal action sought equitable relief at the time the complaints were filed, at the time the Settlement Agreement was entered into, and up until the time the merger was consummated. They therefore assert that the Class should be certified under Chancery Rule 23(b)(1) or (b)(2) which do not allow for any opting-out.

In the context of a settlement of a class action, certification under Chancery Rule 23(b)(l) or (b)(2) is appropriate when the primary relief sought is equitable in nature. *Nottingham*, 564 A.2d at 1094-96; *In re Mobile*, slip op. at 34; *Steiner v. Sithe-Energies, L.P.*, Del. Ch., C.A. No. 9511-NC, 1988 WL 36133, Hartnett, V.C. (Apr. 4, 1988) (approving a settlement without an opportunity to opt out.)

When a Class is certified pursuant to Chancery Rule 23(b)(8), however, and the Class is seeking only money damages, constitutional due process requires that dissenting Class members be given the opportunity to opt-out of the Class. *Phillips Petroleum, Co. v. Shutts*, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985); *Schreiber v. Hadson Petroleum Corp.*, Del. Ch., C.A. No. 8513-NC, Hartnett, V.C. (Oct. 29, 1986), slip op. at 9-10, 1986 WL 12169 (appearing a settlement without an opportunity to opt out;) *Raskin*, slip op. at 12-13; *In re Mobile*, slip op. at 33-36.

An action, however, which consists primarily of equitable claims with an ancillary request for monetary damages, will not require a provision for opting-out. *Joseph v. Shell Oil Co.*, Del. Ch., C.A. No. 7450-NC, Hartnett, V.C. (Feb. 8, 1985), slip op. at 10, 1985 WL 21125 (holding certification under Chancery Rule 23(b)(1)(A) and 23(b)(2) proper.)

In the present case, the claims were clearly primarily equitable when initially filed. The Delaware complaint sought a preliminary injunction and declaratory judgment. The federal *Epstein* action sought the opportunity for the shareholders to make an election between the types of consideration being offered, based on an assumption that two types of consideration were being offered in the tender offer. At the time the Settlement Agreement was entered into and the Class provisionally certified, the tender offer was still pending and the merger had not been completed. The actions therefore still asserted primarily equitable claims. Like any agreement, a settlement should be reviewed from the perspective of the time at which it was entered into. *See Tull v. Turek*, Del.Supr., 147 A.2d 658, 661-62 (1958); *R. Zoppo Co., Inc. v. City of Dover*, 124 N.H. 666, 475 A.2d 12, 15 (1984). Subsequent events cannot change the character of what was settled on December 18, 1990.

I find, therefore, that certification of the Class pursuant to Chancery Rule 23(b)(2) is appropriate and no opportunity to opt out need be provided.

V. THE VALUE OF THE CLAIMS TO BE SETTLED

The next step in determining whether the proposed settlement should be approved is to weigh the value of the claims being settled and released by the settlement, against the value of the settlement to the class members, and then to apply the Court's business judgment to determine if the settlement is intrinsically fair. First to be considered is the value of the claims being released.

A. *The Delaware Action*

The plaintiffs in the Delaware action allege that the Board of Directors of MCA breached a fiduciary duty of care imposed upon them by *Revlon* and its progeny. The Amended Complaint added Matsushita as a defendant for allegedly aiding and abetting the claimed breaches. These claims are based on the duties imposed on directors to ensure that shareholders receive maximum value when a change of corporate control is inevitable. *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, Del.Supr., 506 A.2d 173, 182 (1986). The Supreme Court of Delaware held in *Revlon* that when it is inevitable that a corporation is for sale, the directors' duty changes from an attempt to preserve the corporate entity, to that of an auctioneer to ensure the maximum value for the benefit of the shareholders. *Id.* at 182. Directors are not, however, required to follow a set course of action in the face of a change in corporate control. *Barkan*, 567 A.2d at 1286-87. Rather, they may choose various courses of action, but they must be guided by due diligence and good faith. *Id.*

There is nothing in the record to suggest that the directors of MCA did not act diligently or acted in bad faith. It is clear that the Matsushita/MCA Merger Agreement was a highly negotiated, arm's-length transaction. The price paid for MCA shares represented a 100% premium over the market price prior to public announcement of Matsushita/MCA discussions. Matsushita made a "last and final offer" of $64 per share which MCA's Board rejected and negotiated further to increase the offer to $66 per share. During two months of publicly reported negotiations, no other bidder emerged. The Merger Agreement provided for a "fiduciary out" which allowed MCA's Board to conduct a post-agreement market check and accept a higher offer. Again, no competing offer was made. MCA's Board successfully negotiated for the spinoff of 100% of Pinelands to MCA shareholders, thereby increasing stockholder value, over Matsushita's intent to retain an intent in that asset. Additionally, MCA's financial advisor expressed the opinion that the tender offer was fair and highly recommended the transaction.

It is clear, therefore, that the allegations of a breach of fiduciary duty by the directors of MCA in recommending the acceptance of the tender offer in the Delaware suit are without substantial merit.

Plaintiffs in the Delaware complaint also challenged the Wasserman Agreement as a breach of fiduciary duty by Wasserman. Under that agreement, Wasserman, *inter alia*, would receive preferred shares of a Matsushita subsidiary in exchange for his MCA common stock. The preferred stock was redeemable at either party's option after five years. The redemption price is an amount equal to the liquidation preference ($5,000 per share) plus all unpaid dividends. The stock contains the right to an 8.75% annual cumulative dividend. This agreement was entered into on November 26, 1990, just before the tender offer was announced and it was to be consummated immediately following the close of the tender offer.

Defendants allege that the Wasserman Agreement did not violate any Delaware law and that it had a valid business purpose of ensuring continuity of management.

This claim of plaintiffs is also weak. A shareholder is not prohibited, by his status as a director, from dealing in the shares of the corporation. It is when the director uses inside information for his own benefit that he has abused his office and thus breached his duty of loyalty. *Brophy v. Cities Service Co.*, Del. Ch., 70 A.2d 5, 7 (1949).

There is no evidence that Mr. Wasserman used inside information to achieve a personal benefit for himself. The deal was also fully disclosed in Matsushita's Offer to Purchase.

I therefore find that the asserted state law claims are, at best, extremely weak and, therefore, have little or no value.

B. *Federal Securities Claims*

While the Objectors do not object to the settlement and bar of the state law claims as asserted in the suit filed in this Court, they do object to the barring of the federal security

violation claims that they have asserted in the federal action in California and which were never asserted in this Delaware action. The Objectors, in their federal suit in California, claim that the Wasserman Agreement violates SEC Rule 10b-13 and Section 14(d)(7) of the Federal Securities Act -- more specifically, SEC Rule 14d-10 promulgated thereunder.

C. *SEC Rule 10b-13 Violations*

SEC Rule 10b-13 provides in pertinent part:

> No person who makes a cash tender offer . . . for any equity security shall purchase . . . any such security otherwise than pursuant to such tender offer.

17 C.F.R. § 240.10b-13 (1969). This prohibition attaches at the earliest of either the announcement of the offer or the commencement of the offer and ends at the time the tendered shares must be accepted or rejected by the offerer. *Id.* The purpose of this rule is to protect shareholders who have tendered into a tender offer by prohibiting the Offeror from making an offer outside the tender offer on different terms. The SEC perceives any "outside deal" whether for a higher or lower price, to be detrimental to the shareholders who tendered. SEC Release No. 8712 [1969-1970 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶77,745 (Oct. 8, 1969).

The Objectors first claim that the Wasserman Agreement violates SEC Rule 10b-13 because it was entered into earlier on the same day that the tender offer was announced and it provided for the purchase of MCA common stock otherwise than pursuant to the tender offer. They therefore claim, in effect, that the Wasserman Agreement was actually part of the tender offer.

The Settling Plaintiffs and the defendants respond that SEC Rule 10b-13 does not apply to the Wasserman transaction. According to them, because the Wasserman Agreement was entered into earlier on the same day as the public announcement of the tender offer, it was entered into before the prohibition of SEC Rule 10b-13 attached. The consummation of the deal was to take place immediately following the

acceptance of the tendered shares. Therefore, they claim, the Wasserman transaction falls outside the scope of SEC Rule 10b-13.

Settling Plaintiffs and defendants also assert that SEC Rule 10b-13 does not apply to private purchases. *City Nat. Bank v. American Com. Financial Corp.*, 801 F.2d 714, 717 (4th Cir. 1986). Although this is a correct assertion, the line between a private and public purchase has not yet been clearly drawn. *See, Heine v. The Signal Companies, Inc.*, [1976-1977 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶96,049, 1977 WL 930 (S.D.N.Y.1977). *Cf. Cattlemen's Investment Co. v. Fears*, 343 F.Supp. 1248 (W.D. Okla.1972) with *Nachman Corp. v. Halfred, Inc.*, [1973-1974 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶94,445, 1973 WL 457 (N.D. Ill.1978).

It is not disputed that Matsushita made public purchases of MCA stock through a tender offer. What is disputed is whether the Wasserman Agreement, because of its timing, can be considered to be a part of that tender offer for the purposes of SEC Rule 10b-13. This issue has not yet been definitively addressed by the courts and therefore this claim of Objectors clearly has arguable merit.

D. *SEC Rule 14d-10 Violations*

The second federal securities violation asserted by the Objectors is based on SEC Rule 14d-10, promulgated under Section 14(d)(7) of the Federal Securities Act. This is the "all holders/best price" rule. Pursuant to Rule 14d-10 more than one type of consideration may be offered to shareholders only if "security holders are afforded equal right to elect among each of the types of consideration offered." 17 C.F.R. §240.14d-10 (1986). According to the Objectors, Matsushita offered Wasserman a tax-free stock exchange, while those who tendered into the offer would receive fully taxable cash. The Objectors assert that the Wasserman Agreement therefore violates SEC Rule 14d-10 because those who tendered into the offer were not afforded the equal right to choose between the two types of consideration offered.

Settling Plaintiffs and defendants assert, however, that the plain language of SEC Rule 14d-10 bars the Objectors' claim. While they concede that SEC Rule 14d-10(c) requires that shareholders be given the opportunity to elect between different types of consideration being offered, they assert that subdivision (c) only applies if subdivision (a) is violated. SEC Rule 14d-10(a) applies when one offeree is receiving higher value than other offerees. Defendants argue that subdivision (a) was not violated because the value of Wasserman's preferred stock is substantially less than the cash consideration offered by Matsushita in the tender offer.

Objectors' claim of a violation of SEC Rule 14d-10 also seems to have at least arguable merit. There were two types of consideration offered in the tender offer: one was cash and the other was securities. Although it is claimed that the value of the consideration given to Wasserman had less value than the cash offered to the other stockholders, the true economic value of the Wasserman consideration is uncertain. Therefore, SEC Rule 14d-10(c) may have requited that the shareholders should have been given the opportunity to have made an election as to which consideration to receive. This issue has also never been definitively addressed by the courts and this claim therefore also has at least arguable merit.

This Court must carefully scrutinize a settlement that has the effect of barring claims of at least arguable merit that were never asserted in Delaware but were asserted in a suit elsewhere, especially if the settlement has little or no value to the class. *Cf. Selfe v. Joseph*, Del. Supr., 501 A.2d 409 (1985).

VI. THE VALUE OF THE PROPOSED SETTLEMENT

In consideration for the release of all claims, known or unknown, in both the Delaware action and the federal *Epstein* action, defendants offer to pay plaintiffs' attorneys fees in this Delaware action of up to $1 million. This generous payment, of course, confers no benefit on the members of the Class. The settlement also provides that the Pinelands subsidiary will adopt an altered Shareholders Rights Plan ("poison pill").

The altered poison pill will provide that it will be redeemed: if a fully financed cash tender offer is made for Pinelands; is held open for at least sixty days; and 66 2/3% of the outstanding shares are tendered into the offer. The defendants argue that amending the existing poison pill will encourage a third party to make a bid for Pinelands, thus resulting in increased value for the MCA shareholders (the Class) who received the Pinelands stock dividend. Significantly, the altered poison pill need be in effect for only one year.

Objectors correctly point out that because management owns 26% of Pinelands outstanding stock, in order for the pill to be redeemed against the wishes of management, 90% of Pinelands stock would have to be tendered into the offer (excluding management's shares).

The Objectors also provided the Court with a copy of the Certificate of Incorporation of Pinelands that contains numerous anti-takeover devices of such magnitude as to make the poison pill merely icing on the cake.

The value to the Class from the Pinelands revised poison pill is therefore illusionary and the revision apparently was proposed merely to justify a settlement which offers no real monetary benefit to the Class.

VII. CONCLUSION

In summary, there is no real monetary benefit to the Class members from the settlement and the only claims which have any substantial merit are the claims asserted by the Objectors in the California federal suit that were not asserted in this Delaware action. It would, therefore, be unfair to compel the release of the federal claims by approving the settlement in its present form. The Court finds, therefore, in its business judgment, that the Settlement Agreement, as presently constituted, is not fair and must be rejected.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

----------x

IN RE MCA INC.	:	
CONSOLIDATED	:	C.A. NO. 11740
SHAREHOLDERS	:	
LITIGATION	:	

----------x

STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT

The parties to the above-captioned civil action, by and through their undersigned attorneys, have entered into the following Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or "Settlement") subject to the approval of the Court:

WHEREAS:

A. On September 25, 1990, it was reported in the financial press that MCA INC. ("MCA") was discussing a possible acquisition of MCA by Matsushita Electric Industrial Co., Ltd. ("Matsushita"); and

B. On September 26, 1990 and September 27, 1990, three putative class actions, brought on behalf of all public shareholders of MCA, were filed in the Court of Chancery, entitled *Lazar, et al. v. MCA INC., et al.*, No. 11740 (filed Sept. 26, 1990) (the "*Lazar* Action"); *Stepak, et al., v. MCA INC., et al.*, No. 11741 (filed Sept. 26, 1990); and *Naphtali, et al, v. MCA INC., et al.*, No. 11747 (filed Sept. 27, 1990) (collectively, unless otherwise indicated, the "Delaware Actions"). The Delaware Actions sought, among other things, an order directing MCA to take all appropriate steps to effectively expose MCA to the marketplace in an effort to obtain a transaction which would yield the greatest value for the

stockholders of the Company. Named as defendants in the Delaware Actions were MCA and its directors: Lew R. Wasserman ("Wasserman"), Thomas V. Jones, Robert S. Strauss, Thomas Wertheimer, Howard H. Baker, Jr., Thomas P. Pollack, Felix G. Rohatyn, Sidney J. Sheinberg ("Sheinberg"), Howard P. Allen, Mary Gardiner Jones, and Charles S. Paul. Upon consent of all parties, and by Stipulation and Order dated October 2, 1990, the Court consolidated the Delaware Actions under the caption *In Re MCA INC. Shareholders Litigation*, Consolidated C.A. No. 11740; designated the Complaint in the *Lazar* Action as the Complaint in the Delaware Actions; and appointed as co-lead counsel the firms of Milberg Weiss Bershad Specthrie & Lerach; Abbey & Ellis; Berger & Montague; and Wolf, Popper, Ross, Wolf & Jones ("Plaintiffs' Lead Counsel"); and

C. On September 26, 1990, a putative class action, brought on behalf of all public shareholders of MCA, was filed in the Superior Court of California, entitled *Lazar, et al. v. MCA INC., et al.*, No. BC011305, and on October 2, 1990, a stockholders' derivative action, brought on behalf of MCA, was filed in the Superior Court of California, entitled *MCA INC., derivatively by Robert Silverstein v. Lew R. Wasserman, et al.*, Case No. BC011572 (collectively, the "California State Actions"). The California State Actions (which were ultimately dismissed without prejudice on September 20, 1991), asserted substantially similar claims and sought substantially similar relief as the claims asserted and the relief sought in the Delaware Actions; and

D. (i) On November 26, 1990, MCA and Matsushita announced that they had entered into an Agreement and Plan of Merger (the "Merger" and the "Merger Agreement"). Pursuant to the Merger Agreement, Matsushita Acquisition Corp. ("Matsushita Acquisition"), an indirectly wholly-owned subsidiary of Matsushita, agreed, among other things, to make a tender offer for all outstanding shares of MCA common stock at $66 per share (the "Tender Offer"). Following successful completion of the Tender Offer, upon the terms and subject to the conditions of the Merger Agreement and the Delaware

General Corporation Law, Matsushita Acquisition Corp. merged with and into MCA, effective January 3, 1991. The Merger consideration was the same price per share paid in the Tender Offer; and

(ii) Pursuant to a Capital Contribution and Loan Agreement (the "Capital Contribution Agreement") between Lew R. Wasserman, Matsushita, and Matsushita Holding Corp. ("Matsushita Holding"), a wholly-owned subsidiary of Matsushita, Wasserman agreed to and did contribute, following the acceptance for payment of MCA shares in the Tender Offer, 4,953,927 shares of MCA common stock in exchange for preferred stock in Matsushita Holding. The Preferred Stock received by Wasserman had an aggregate liquidation preference equal to $66 multiplied by the number of shares of common stock contributed by Wasserman. The Preferred Stock provides for the payment of an annual cumulative 8.75% dividend; and

(iii) MCA also entered into certain employee compensation arrangements (as described in the Solicitation/ Recommendation Statement of MCA filed on November 30, 1990 on SEC Schedule 14D-9). Matsushita further entered into agreements with Sidney J. Sheinberg and David Geffen (the "Tender Agreements") providing for such individuals to tender their MCA shares into the Tender Offer; and

(iv) MCA and an MCA subsidiary which held MCA's broadcasting assets simultaneously entered into a separate Distribution Agreement pursuant to which ownership of MCA's broadcasting assets were spun-off 100% to the MCA shareholders. The consummation of the Tender Offer for MCA's shares was conditioned upon MCA's broadcasting assets having been spun-off; and

E. Following public announcement of the Merger Agreement, counsel for plaintiffs in the Delaware Actions informed counsel for defendants that they intended to seek preliminary injunctive relief against consummation of the Merger Agreement, and they initially undertook to state the bases for such injunction motion and describe the claims against the Merger

Agreement in writing by December 4, 1990, and later to file an amended complaint; and

F. By letter dated November 27, 1990, the Delaware Chancery Court advised plaintiffs that their application for preliminary injunctive relief would be heard on December 20, 1990. The hearing date was subsequently changed to December 18, 1990; and

G. By letter to defendants' counsel dated December 4, 1990 (sometimes referred to herein as the "December 4, 1990, Claim Letter") pursuant to a stipulated procedure submitted to the Court, co-lead counsel for plaintiffs in the Delaware Actions set forth the claims upon which plaintiffs based their motion for a preliminary injunction. These claims advanced by plaintiffs included, among other things, the claims that (i) defendants failed to fulfill their duty to maximize shareholder value and had failed to obtain fair value in the Merger Agreement; (ii) defendants had breached their duty of making fair and full disclosures concerning the Merger Agreement, including, among other things, failing to disclose material facts concerning the compensation and bonus payments to certain individuals contemplated in the Merger Agreement, and that defendants allegedly intended to retain control over WWOR-TV following spin-off of MCA's broadcast assets to shareholders; (iii) defendants breached their duty of candor by failing to disclose material information concerning the operating segments of MCA that was provided to Matsushita; (iv) defendants breached their fiduciary duties by according "preferential treatment" to defendant Lew R. Wasserman in connection with the Tender Offer, in that "Mr. Wasserman . . . impermissibly negotiated preferential arrangements in connection with the transaction whereby he . . . exchange[d] stock for stock and avoid[ed] costly capital gains taxes to which all other stockholders [were] subject"; and (v) defendants violated SEC Rule 13e-3 because Mr. Wasserman's receipt of preferred stock allegedly established that the transaction was a "going-private" transaction under SEC Rule 13e-3 of the Securities Exchange Act of 1934, and defendants allegedly failed to comply with the requirements of SEC Rule

13e-3 governing such transactions. The December 4 claim letter stated that plaintiffs' counsel intended to consider whether to modify and/or supplement the claims and legal theories contained in the claim letter as discovery and briefing proceeded; and

H. On December 3, 1990, a putative class action complaint entitled *Epstein v. MCA INC., et al.*, No. CV-90-6451-R, brought on behalf of a class of all shareholders of MCA, was filed in the United States District Court for the Central District of California (the "Federal District Court") (hereinafter, the "*Epstein* Action"). The complaint in the *Epstein* Action, as amended on December 6, 1990, alleged that the arrangements whereby defendant Wasserman exchanged his MCA stock for preferred stock in Matsushita Holding Corp. pursuant to the Capital Contribution Agreement (i) violated SEC Rule 10b-13 because it allegedly entailed a purchase of MCA stock by Matsushita outside the Tender Offer during the Tender Offer period, and (ii) violated SEC Rule 14d-10 because the preferred stock received by Wasserman allegedly was different or greater consideration than that made available to public shareholders in the Tender Offer. The complaint was subsequently amended to include a similar claim under SEC Rules 10b-13 and 14d-10 that a payment to defendant Sheinberg, which defendants asserted was a bonus payment derived from the level of incentive compensation that had been expected to be awarded to Sheinberg in the ordinary course but for the acquisition, allegedly constituted additional consideration for his MCA shares. The complaint sought preliminary and permanent injunctive relief and monetary damages. The *Epstein* Action complaint, as subsequently amended, named as defendants MCA, Matsushita, Matsushita Acquisition, Matsushita Holding, and Wasserman and Sheinberg; and

I. In or around the beginning of December 1990, plaintiffs' counsel in the Delaware Actions obtained extensive document discovery from defendants and their financial advisors, and thereafter took the depositions of certain defendants (including defendants Wasserman, Sheinberg and Howard P. Allen); and

J. Commencing on or about November 29, 1990, counsel for defendants and counsel for plaintiffs engaged in discussions concerning possible settlement of the dispute between the parties. Thereafter, a meeting was held between counsel for the parties and settlement negotiations began in earnest. During those settlement discussions, which continued through December 11, 1990, plaintiffs sought to enhance the terms of the transaction and in particular, sought improvements in the terms of the shareholder rights plan of the spin-off company with a view towards increasing the value of the shares of the spin-off company to be distributed to MCA shareholders; and

K. Following these negotiations, on December 11, 1990, an agreement in principle between the parties hereto was reached providing, as described in ¶ N below, for the compromise, release and settlement of the claims asserted in the Delaware Actions, the California State Actions, and the *Epstein* Action (hereinafter, the "Initial Proposed Settlement"); and

L. On December 11, 1990, the Federal District Court was advised of the existence of the Initial Proposed Settlement and set December 28, 1990, as the date for a hearing on a motion for summary judgment made by the *Epstein* plaintiff, who contended that the Tender Offer violated SEC Rules 10b-13 and 14d-10 and should be enjoined. Counsel for plaintiff in the *Epstein* Action stated that his client in *Epstein*, a member of the proposed class in the Delaware Actions, would seek to exclude himself from the Initial Proposed Settlement and that he wished to continue to litigate the claims asserted in the *Epstein* complaint; and

M. An amended consolidated complaint (the "Amended Complaint") in the Delaware Actions was filed on December 14, 1990, which encompasses the claims set forth in the December 4, 1990, Claim Letter. The defendants in the Amended Complaint are MCA, Matsushita, Matsushita Holdings, Matsushita Acquisition, Wasserman, Sheinberg, Thomas P. Pollack, Thomas Wertheimer, Charles S. Paul, Howard H. Baker, Robert S. Strauss, Felix G. Rohatyn, Thomas V. Jones, Howard P. Allen and Mary Gardiner Jones, all

of whom are alleged to have participated in the wrongs alleged in the Amended Complaint. The claims alleged in the Amended Complaint are, *inter alia*, that (i) the individual defendants breached their fiduciary duty to MCA's shareholders by failing to adopt methods calculated to obtain the highest per share value in the sale of MCA, including their alleged failure to use "market check" mechanisms to assure the fairness of the acquisition terms; (ii) the individual defendants breached their fiduciary duty to MCA's shareholders by failing to obtain a fair price per share in the sale of MCA; (iii) the individual defendants treated Matsushita as a preferred bidder, in alleged violation of their fiduciary duty; (iv) the individual defendants, MCA and Matsushita entered into allegedly impermissible preferential treatment arrangements for the treatment of defendant Wasserman's MCA stock holdings, specifically with respect to the transaction by which he exchanged his MCA stock for preferred stock of a Matsushita subsidiary pursuant to the Capital Contribution Agreement, and that the purpose of such preferential treatment was to allow defendant Wasserman to avoid tax liability on the sale of his MCA stock which other MCA stockholders will not be able to avoid; (v) the disclosures made by defendants in connection with the Tender Offer, including without limitation the disclosures contained in Matsushita's Offer to Purchase and Schedule 14D-1, and the disclosures contained in MCA's Schedule 14D-9, were deficient and contain material omissions and misrepresentations, including omissions and misrepresentations with respect to the disclosure of the arrangements concerning receipt of preferred stock by defendant Wasserman pursuant to the Capital Contribution Agreement, and with respect to arrangements regarding benefits and compensation for members of MCA management; (vi) that the MCA board was allegedly not composed of a majority of directors without conflicts of interest with respect to the Merger Agreement; (vii) that the individual defendants allegedly intended to retain effective control over MCA's broadcasting assets after the spin-off of such assets, and that defendants -through adoption of an overly restrictive "poison pill" shareholder rights plan -- intended to prevent the

emergence of market forces which could result in a sale of the spin-off company at a price representing maximum value for shareholders; (viii) that defendants breached their duty of candor by failing to disclose certain allegedly material information concerning the operating segments of MCA, which information was allegedly provided to Matsushita; (ix) that defendants failed to disclose, in violation of their duty of candor, certain prior market contacts between MCA and other potential purchasers and other material information required to be disclosed pursuant to SEC Rule 13e-3; (x) that the arrangements for employee compensation, including certain employment agreements, bonus payments, and payments with respect to options, violated defendants' fiduciary duties, and were not fully and fairly disclosed; and (xi) the individual defendants agreed in the Merger Agreement to treatment of MCA's Yosemite assets that was allegedly not in the best interests of MCA's shareholders. The Amended Complaint seeks predominantly equitable relief, or, alternatively, damages; and

N. On December 17, 1990, a Stipulation of Settlement was executed between counsel for the parties to the Delaware Actions reflecting the terms of the Initial Proposed Settlement (hereinafter, the "Initial Stipulation"). Pursuant to the Initial Stipulation:

(i) MCA agreed, *inter alia*, to cause its wholly-owned subsidiary holding its broadcast assets, which by the terms of a Distribution Agreement entered into simultaneously with the Merger Agreement was to be spun-off to MCA shareholders pro rata prior to Matsushita's purchase of shares pursuant to the Tender Offer (the "Spin-off Company"), to adopt a common stock shareholder rights plan that provided, *inter alia*, that, if a fully financed cash tender offer for all of the shares of Spin-off Company common stock was commenced and held open for at least 60 days, then the rights would be automatically redeemed at the redemption price of one cent per share immediately prior to the closing of such offer, provided that at least 66-2/3% of the outstanding shares of Spin-off Company common stock were tendered into such offer and

not withdrawn; that the "flip-in" threshold under such Rights Plan would be 15%; and that these provisions would not be amended for a period of at least one year from the adoption of the plan; and

(ii) Subject to Court approval, all claims and causes of action asserted in the Delaware Actions, the California State Actions, and the *Epstein* Action, including all claims arising under Delaware common law and the federal securities laws (including the federal securities laws claims asserted in the *Epstein* Action), would be settled, released and discharged; and

(iii) Counsel for the parties agreed to request the Court to enter an order providing that the Delaware Actions may proceed for settlement purposes as a class action, pursuant to Chancery Court Rules 23(b)(1) and (b)(2), on behalf of all holders of MCA common stock from September 25, 1990, and their successors in interest, immediate or remote (excluding defendants and members of their immediate families) (hereinafter, the "Initial Settlement Class").*/

O. On December 18, 1990, this Court entered an Order which, among other things, provisionally certified the Initial Settlement Class pursuant to Rules 23(b)(1) and (2) of the Court of Chancery; scheduled a hearing for January 30, 1991, to determine whether the Initial Settlement embodied in the Initial Stipulation was fair, reasonable and adequate and should be approved by the Court; and provided for the mailing of notice of the Initial Settlement to members of the Initial Settlement Class; and

P. On December 28, 1990, the Federal District Court denied the *Epstein* plaintiff's motion for summary judgment. No appeal therefrom was sought to be taken. The Tender Offer

*/ In August 1992, all of the common shares of the Spin-off Company (which was named Pinelands, Inc.) were acquired at a cash price of $18.1184 per Pinelands, Inc. share by BHC Communications Inc. pursuant to an Agreement and Plan of Merger dated as of May 7, 1992.

expired as scheduled on December 29, 1990, with virtually all of the MCA common shares having been tendered. A second-step cash merger was then consummated on January 3, 1991, by which MCA became a wholly-owned subsidiary of Matsushita; and

Q. On January 23, 1991, David Minton and Andrew Minton (purported shareholders of MCA), served a Notice of Intent to Appear and Object to the Initial Proposed Settlement (hereinafter, the "Objection" and the "Objectors"). In principal part, the Objectors argued that the Initial Proposed Settlement improperly purported to release and discharge the claims asserted in the *Epstein* Action without affording members of the putative class the opportunity to opt out of the class and thus not be bound by the proposed release of the federal securities laws claims contained in the Initial Stipulation, and that the claims asserted in the *Epstein* Action were substantial and valuable claims; and

R. On January 30, 1991, a hearing was held before this Court in accordance with the December 18, 1990, Order during which the Court heard and considered, *inter alia*, (i) plaintiffs' application for final approval of the Initial Proposed Settlement; (ii) the arguments pursuant to the Objection; and (iii) plaintiffs' counsels' application for attorneys' fees and reimbursement of expenses; and

S. On April 22, 1991, this Court rendered its decision and order (the "Decision and Order") with respect to plaintiffs' application for final approval of the Initial Proposed Settlement and the arguments raised by the Objectors. Pursuant to the Decision and Order, the Court ruled, *inter alia*, that certification of the Initial Settlement Class pursuant to Chancery Court Rule 23(b)(2) was appropriate, and that contrary to the arguments raised by the Objectors, no opportunity to opt out by members of the Initial Settlement Class was required. However, the Court rejected plaintiffs' application for final approval of the Initial Proposed Settlement, concluding in this regard that the benefits to be conferred pursuant to the Initial Stipulation were not sufficient consideration for the release

and dismissal of the claims asserted in the Delaware Actions and the federal claims asserted in the *Epstein* Action. The Court stated in its Decision and Order, *inter alia*, that the state law claims proposed to be settled had "little or no merit and therefore no value"; that the value of the Initial Proposed Settlement was "also minimal"; and that the federal claims asserted in the *Epstein* Action "have at least arguable merit and therefore significant value." As to such federal claims, the Court found that the issues raised by such claims had "not yet been definitively addressed by the courts" and therefore the claims had "arguable merit." The Court concluded "that it would be unfair to bar the federal claims and therefore the settlement cannot be approved in its present form"; and

T. During December 1990 and January 1991, four purported class actions, brought on behalf of MCA shareholders, were filed in the Federal District Court, entitled *Linder v. MCA INC., et al.*, No. CV-90-6744-KN (filed on December 18, 1990) (the "*Linder* Action"); *Rockford v. MCA INC., et al.*, No. CV-90-6744-JMI (filed on December 18, 1990) (the "*Rockford* Action"); *Karlin, et al. v. MCA INC., et al.*, No. CV-90-6775-R (filed December 18, 1990) (the "*Karlin* Action"); and *Minton v. MCA INC., et al.*, No. CV-91-0336-R (filed on January 17, 1991) (the "*Minton* Action"). The *Linder* Action, the *Rockford* Action, the *Karlin* Action and the *Minton* Action assert substantially similar claims and seek substantially similar relief as the claims asserted and the relief sought in the *Epstein* Action. Unless otherwise indicated, the *Epstein* Action, the *Linder* Action, the *Rockford* Action, the *Karlin* Action and the *Minton* Action -- all of which were consolidated by the Federal District Court on April 1, 1991 -- are collectively referred to herein as the "California Federal Actions", and the plaintiffs in the California Federal Actions are hereinafter referred to as the "Federal Plaintiffs"; and

U. Subsequent to the Court's Decision and Order, the following events occurred in one or all of the California Federal Actions: (i) On April 1, 1991, the Federal District Court denied the second motion by one of the Federal Plaintiffs for summary judgment on the SEC Rule 10b-13 and 14d-10

claims, and denied the Federal Plaintiffs' first motion for class certification; (ii) On July 1, 1991, the Federal District Court granted the Matsushita defendants' motion to dismiss the claims asserted against them under SEC Rule 10b-13 on the ground that no private right of action exists under that provision, and dismissed all claims asserted against MCA and Messrs. Wasserman and Sheinberg for failure to state a claim as to them; (iii) On September 3, 1991, the Federal District Court denied the Federal Plaintiffs' second motion for class certification; (iv) On November 4, 1991, prior to the completion of discovery, the Federal District Court denied a motion for summary judgment by the Matsushita defendants against the remaining Rule 14d-10 claim, while also denying the third motion for summary judgment by the Federal Plaintiffs; (v) on December 9, 1991, the Federal District Court enjoined the Federal Plaintiffs and their counsel from commencing any new litigation arising out of the MCA acquisition in any forum, without prior leave of the Federal District Court; (vi) On December 16, 1991, the Federal District Court denied the Federal Plaintiffs' motion to amend their complaint to assert additional claims under Sections 14(d)(7) and 14(e) of the Williams Act; (vii) On January 6, 1992, the Federal District Court denied plaintiff in the *Minton* Action leave to amend his complaint to assert a claim under Section 14(d)(7) of the Williams Act; (viii) On January 13, 1992, the Federal District Court permitted the voluntary dismissal of all of the plaintiffs in the *Karlin* Action from the California Federal Actions; (ix) On January 27, 1992, after full briefing and a hearing, the Federal District Court found each of the Federal Plaintiffs, including the *Karlin* plaintiffs, and their counsel, in contempt of Court for their continued failure to provide Matsushita with all discovery ordered to be produced in the Federal District Court's Order of November 4, 1991, and subsequently awarded sanctions to Matsushita in the amount of $15,000; (x) On February 10, 1992, the day before trial on the merits was set to commence, and after the completion of discovery, the Federal District Court granted the Matsushita defendants' motion for summary judgment dismissing the remaining claim under SEC Rule 14d-10 and permanently enjoined the

Federal Plaintiffs and their counsel, and all persons in active concert or participation with them (or having notice of the order), from commencing litigation in any forum involving claims or defenses arising out of the same transactions as the California Federal Actions between the parties, without prior leave of the Federal District Court; (xi) On March 3, 1992, upon the Matsushita defendants' motion to supplement the record, the Federal District Court found that plaintiff and purported class representative Lawrence Epstein prosecuted the California Federal Actions for 15 months under false pretenses because he deliberately concealed that the MCA stock owned by him was held in a tax-free individual retirement account. The Federal District Court found that this fact demonstrated that plaintiff Epstein did not and could not have sustained any injury as a result of the Tender Offer, and, if known, would have disqualified him as a plaintiff in the California Federal Actions; and

V. Plaintiffs in the California Federal Actions have appealed the Federal District Court's dismissals of their actions to the United States Court of Appeals for the Ninth Circuit. The Federal Plaintiffs also appealed the denials of their motions for class certification and other rulings made by the Federal District Court, including the contempt ruling referred to above; and

W. On October 30, 1991, David and Andrew Minton, children of plaintiff Walter Minton, filed a putative class action complaint in the Federal District Court, entitled *Minton, et al., v. MCA INC., et al.*, No. CV-91-5914-R (hereinafter, the "Second *Minton* Action"). The complaint in the Second *Minton* Action, as amended on December 9, 1991, sought monetary damages for alleged violation of SEC Rules 10b-13 and 14d-10 and Section 14(d)(7) of the Williams Act. The amended complaint alleged that the arrangements whereby defendant Wasserman exchanged his MCA stock for preferred stock in Matsushita Holding Corp. pursuant to the Capital Contribution Agreement (1) violated SEC Rule 10b-13 because it allegedly represented a purchase of MCA stock by Matsushita during the period covered by the Rule that was not

pursuant to the Tender Offer, and (2) violated Section 14(d)(7) of the Williams Act and SEC Rule 14d-10 because such preferred stock received by Wasserman allegedly represented different and/or greater consideration than that made available to public shareholders in the Tender Offer. By Order dated February 11, 1992, the Federal District Court granted defendants' motion to dismiss the amended complaint, finding that it was filed in bad faith and that plaintiffs and their father, Walter Minton, were aligned in interest. Plaintiffs David and Andrew Minton have appealed the Federal District Court's dismissal of their complaint to the United States Court of Appeals for the Ninth Circuit. The appeals filed in the California Federal Actions and the Second *Minton* Action (Nos. 92-55288, 92-55632, 92-55675, 9255677) are pending, with briefing scheduled to be completed by the end of this year, and no date for argument of the appeals has been set by the Court of Appeals.

X. On November 4, 1991, a putative class action, allegedly brought on behalf of all shareholders of MCA as of the close of trading on November 23, 1990, was commenced against Lazard Freres & Co. ("Lazard") in the Supreme Court of the State of New York, County of New York, entitled *Epstein v. Lazard Freres & Co.*, No. 31127/91 (hereinafter, the "Second *Epstein* Action"). The complaint in the Second *Epstein* Action alleged that Lazard, which served as financial advisor to MCA in connection with its acquisition by Matsushita, was negligent and breached a fiduciary duty in its advice to MCA concerning the fairness of the transaction price, and that Lazard had a conflict of interest with respect to its MCA engagement. The complaint seeks damages, and alleges that the difference between the value paid to the shareholders in the acquisition and "fair value" represents "damages of no less than approximately $250 million and possibly as much as $1.2 billion"; and

Y. By decision dated September 24, 1992, the New York court granted a motion by Lazard to dismiss the Second *Epstein* Action with prejudice under principles of *res judicata* in

light of the entry of judgment in favor of the defendants and against the plaintiffs in the California Federal Actions; and

Z. From and after this Court's Decision and Order declining to approve the Initial Proposed Settlement, counsel for the parties in the Delaware Actions continued to discuss a possible alternative resolution of the Delaware Actions. In February, 1992, following the Federal District Court's decision to dismiss the remaining claim in the California Federal Actions, these discussions developed into negotiations in earnest regarding an alternative settlement of the Delaware Actions. On June 18, 1992, counsel for the parties arrived at an agreement in principle to settle the Delaware Actions, subject to the execution of a formal Stipulation of Settlement and Court approval thereof; and

AA. Based on their review and analysis of the relevant facts and controlling legal principles, the document and deposition discovery obtained in the Delaware Actions, their review of relevant pleadings and proceedings in the California Federal Actions, the Second *Minton* Action, and the Second *Epstein* Action, and their analysis and understanding of this Court's reasoning and holdings in the Decision and Order, plaintiffs' attorneys in the Delaware Actions have concluded that the terms and conditions of the Settlement hereinafter set forth are fair, reasonable and adequate, and beneficial to and in the best interests of plaintiffs and the proposed Settlement Class (as defined below). Plaintiffs have agreed to settle the Delaware Actions pursuant to the terms and provisions of this Stipulation after considering (i) the substantial monetary benefits that former MCA shareholders will receive pursuant to the Settlement; (ii) the Court's evaluation of the claims asserted in the Delaware Actions as reflected in the Decision and Order; (iii) the attendant risks and delays of continued litigation; (iv) uncertainties relating to proof of the allegations asserted in the Delaware Actions; (v) the Federal District Court's disposition of the federal securities claims asserted in the California Federal Actions and the Second *Minton* Action; (vi) the impact of principles of *res judicata* on the viability of the Second *Epstein* Action in light of the Federal District

Court's disposition of the California Federal Actions, including the decision of the New York court to dismiss the Second *Epstein* Action with prejudice on *res judicata* grounds; and (vii) the fact that the present Settlement allows members of the Settlement Class (defined below) to exclude themselves from the Settlement Class should they so desire and thereby not be precluded by the Settlement from individually seeking to pursue the claims alleged in the Delaware Actions, the California Federal Actions, the Second *Minton* Action, the Second *Epstein* Action or any other claims relating to the events at issue in the Delaware Actions; and

BB. Defendants vigorously deny all liability or wrongdoing with respect to any and all of the claims alleged in the Delaware Actions, but consider it desirable that the Delaware Actions be settled because such settlement will (i) avoid the substantial expense, inconvenience and distraction of continued litigation in the Delaware Actions, or any other action or proceeding relating to the matters being settled, and (ii) finally put to rest plaintiffs' claims and all other claims relating to the matters being settled.

In light of the foregoing, the parties propose to settle the Delaware Actions in accordance with the terms and provisions of this Stipulation as set forth below.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to the approval of this Court, pursuant to Rule 23 of the Court of Chancery Rules, by and between defendants hereto and the plaintiffs for themselves and for the Settlement Class (defined below), that all claims, rights and causes of action (state or federal, including but not limited to claims arising under the federal securities laws, and any rules or regulations promulgated thereunder, or otherwise), whether known or unknown that are, could have been or might in the future be asserted by any of the plaintiffs or any member of the Settlement Class, whether directly, derivatively, representatively or in any other capacity, against any of the named defendants in the Delaware Actions (regardless of whether such defendant has been served or entered an appearance in any of

the actions) and their respective present and former officers, directors, employees, agents, attorneys, financial advisors, commercial bank lenders, investment bankers, representatives, trustees, affiliates, associates, parents, subsidiaries, general and limited partners and partnerships, heirs, executors, administrators, successors, and assigns including without limitation Lazard (financial advisor to MCA), Allen & Co. Inc. (financial advisor to Matsushita) and Creative Artists Agency Inc. (advisor to Matsushita) or against anyone else (collectively, the "Released Persons") in connection with or that arise now or hereafter out of the Merger Agreement, the Tender Offer, the Distribution Agreement, the Capital Contribution Agreement, the employee compensation arrangements, the Tender Agreements, the Initial Proposed Settlement, this Settlement (except for compliance with the Settlement), or any matters, transactions or occurrences referred to in the December 4, 1990, Claim Letter and the Amended Complaint in the Delaware Actions or the fiduciary or disclosure obligations of any of the Released Persons with respect to any of the foregoing, and including without limitation the claims asserted in the California Federal Actions, the Second *Minton* Action and the Second *Epstein* Action (all of which are hereinafter collectively referred to as the "Settled Claims"), shall be compromised, settled, released and discharged with prejudice, upon and subject to the following terms and conditions:

1. In consideration for the full settlement, satisfaction and compromise of the Settled Claims, as defined above, subject to the terms and conditions hereof, defendants agree to deposit $2.0 million (plus interest as described below) in a settlement fund (the "Settlement Fund") to be paid pro rata to those members of the Settlement Class whose shares of MCA stock were purchased pursuant to the Tender Offer or were cashed out or converted pursuant to the Merger, as reflected on the records of such payments, said monies to be deposited at such time as the Settlement shall become final in accordance with its terms; provided however, that any amounts awarded by the Court for plaintiffs' attorneys' fees and/or disbursements shall be paid out of such Settlement Fund prior to distribution of said funds. Beginning on the next business

day after the Order and Final Judgment is entered by the Court of Chancery, the Settlement Fund shall accrue interest at a compound rate of 3% per annum and continue to accrue interest at such rate until the Settlement Fund is fully and finally distributed pursuant to the terms herein.

2. For purposes of settlement only, the Delaware Actions, as consolidated, shall be maintained and proceed as a class action, pursuant to Chancery Court Rules 23(a) and (b)(3), on behalf of a class of persons as defined in paragraph 4(a) of this Stipulation.

3. The obligations of the defendants under this Stipulation shall be in full settlement, compromise, release and discharge of the Settled Claims and each of them. Upon approval of the Settlement provided for in this Stipulation by the Court and consummation of defendants' obligations hereunder, the defendants, the Released Persons or any of them shall have no other or further liability or obligation to anyone with respect to the Settled Claims, except as expressly provided herein.

4. As soon as practicable after this Stipulation has been executed, the parties shall jointly move the Court for approval of the Settlement. The parties shall apply jointly for an Order, in the form annexed hereto as Exhibit A (the "Order"), providing, among other things:

(a) that for purposes of settlement only, the Delaware Actions shall be maintained and proceed as a class action, pursuant to Chancery Court Rules 23(a) and (b)(3), on behalf of a class consisting of all holders of MCA common stock on and after September 25, 1990, and their successors in interest, immediate or remote, through and including effectuation of the Merger on January 3, 1991 (excluding defendants and their immediate families and any person who has validly requested exclusion in accordance with the procedures set forth in paragraph 6 of this Stipulation) (hereinafter the "Settlement Class" and the "Class Period");

(b) that (i) the Notice of Pendency of Class Actions, Class Action Determination, Proposed Settlement of Class Actions,

Settlement Hearing, and Right to Appear, in the form annexed hereto as Exhibit B (the "Notice"); and (ii) the Summary Notice of Class Action Determination, Proposed Settlement of Class Actions and Settlement Hearing in the form annexed hereto as Exhibit C (the "Summary Notice"), are approved by the Court, and that the mailing and publication of the Notice substantially in the manner and form set forth in the Order and the publication of the Summary Notice in the manner and form set forth in the Order meet the requirements of Court of Chancery Rule 23 and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto; and

(c) that a hearing (the "Settlement Hearing") shall be held before the Court, at a time and date to be set by the Court, to determine whether the proposed settlement of the Delaware Actions on the terms and conditions set forth in the Stipulation is fair, reasonable and adequate and should be approved by the Court, and whether a judgment should be entered, and to consider the application of counsel for the Settlement Class for an award of fees and reimbursement of expenses.

5. If the Settlement (including any modification thereto made with the consent of the parties as provided for herein), shall be approved by the Court following a hearing, the parties shall jointly request the Court to enter an Order and Final Judgment ("Final Order"), substantially in the form annexed hereto as Exhibit D, among other things:

(a) approving the Settlement as fair, reasonable and adequate and directing consummation of the Settlement in accordance with its terms and provisions;

(b) dismissing the Delaware Actions as to all defendants in the Delaware Actions with prejudice as against all plaintiffs and all members of the Settlement Class, without costs except as hereinafter provided, such dismissal to be subject only to compliance by the parties with the terms and conditions of the Stipulation and any Order of the Court with reference to the Stipulation;

(c) permanently barring and enjoining the institution or prosecution by plaintiffs or any member of the Settlement Class, either directly or in any other capacity, of any action asserting claims which are Settled Claims as heretofore defined;

(d) releasing and discharging, on behalf of the Settlement Class and the plaintiffs, the Released Persons from all Settled Claims; and

(e) awarding attorneys' fees and expenses to plaintiffs' counsel, or reserving jurisdiction with respect thereto.

6. (a) Requests for Exclusion from the Settlement Class shall list the name, address and social security number *or* taxpayer identification number of the person seeking exclusion, and the amount of all MCA common stock owned by such person during the Class Period;

(b) If a Request for Exclusion does not include all of the foregoing information, it shall not be a valid Request for Exclusion and the person or entity filing an invalid Request for Exclusion shall be a member of the Settlement Class. All persons who properly file Requests for Exclusion from the Settlement Class shall not be members of the Settlement Class and shall have no rights with respect to the Settlement and no interest in the Settlement Fund.

(c) Each potential Settlement Class member who does not submit a properly completed Request for Exclusion no later than twenty (20) days prior to the Settlement Hearing shall be included in the Settlement Class. For purposes of determining timeliness, a Request for Exclusion shall be deemed to have been submitted when posted, if a postmark is indicated on the envelope and it is mailed, postage prepaid and addressed in accordance with the instructions in said Notice. The original Requests for Exclusion shall be filed by mailing to the P.O. Box address referred to in the Notice.

7. The approval by the Court of the Settlement proposed by the Stipulation shall be considered final for purposes of this Stipulation either (a) upon the entry by the Court of the Final

Order and when the applicable period for the appeal of such Final Order shall have expired without an appeal having been filed; or (b) if an appeal is taken, upon entry of an order affirming the Final Order and when the applicable period for the appeal of such affirmance of the Final Order shall have expired without an appeal having been filed, or upon entry of any Stipulation dismissing any such appeal with no right of further prosecution of the appeal; or (c) if an appeal is taken from any decision of the Delaware Supreme Court upon entry of an order in such appeal finally affirming the Final Order without right of further appeal or upon entry of any Stipulation dismissing any such appeal with no right of further prosecution of the appeal.

8. (a) Provided that Court approval of the Settlement has been obtained, plaintiffs' counsel in the Delaware Actions will jointly apply to this Court for an award of attorneys' fees, plus reimbursement of expenses. Plaintiffs' counsel also intend to apply to the Court for provision that any award of fees and disbursements with respect to such fee application shall accrue interest at the same interest rate earned on the Settlement Fund, as provided for in paragraph 1 herein, from the date the Court approves such award through and including the date of payment. Defendants shall not oppose either of such applications. Plaintiffs' counsels' application for attorneys' fees and expenses may be made, at the option of plaintiffs' counsel, at or subsequent to the Settlement Hearing referred to in paragraph 4(c) hereof. Any attorneys' fees and expenses so awarded by the Court to plaintiffs' counsel shall not be payable unless and until the Final Order shall become final, as provided in paragraph 8 hereof. Any attorneys' fees and expenses awarded by the Court to plaintiffs' counsel shall be paid out of the Settlement Fund to Milberg Weiss Bershad Specthrie & Lerach (in escrow for plaintiffs' counsel in the Delaware Actions) or as the Court may otherwise direct, within ten (10) business days after the Settlement shall become final in accordance with its terms.

(b) Defendants will pay the costs of the Notice and settlement administration provided for by the Order referred to in

paragraph 4(b) hereof. Plaintiffs and their counsel shall have no responsibility for any such costs regardless of whether the Settlement is consummated. Except as provided in this Stipulation, the defendants shall bear no other expenses, costs, damages or fees incurred by any named plaintiffs, by any member of the Settlement Class, or by any of their attorneys, experts, advisors, agents or representatives.

9. The parties shall have the option to withdraw from the Settlement in the event that: (a) the Orders as provided in paragraphs 4 and 5 hereof are not entered substantially in the form specified therein, including such modifications thereto as may be ordered by the Court with the consent of the parties; (b) the Settlement is not approved by the Court; or (c) such order is reversed or substantially modified upon appeal. In addition, defendants shall have the option to withdraw from the Settlement no later than three days before the Settlement Hearing in the event that valid Requests for Exclusion are received from persons who collectively held in excess of that number of MCA common shares which plaintiffs and defendants have agreed upon (which number shall be kept confidential by the parties). In the event any party to the Settlement exercises such option to withdraw, a written notice of such withdrawal and the grounds therefor shall be promptly delivered to all signatories to this Stipulation. As a result of any such withdrawal, this Stipulation, the Settlement proposed herein (including any modification thereto made with the consent of the parties as provided for herein) and any action taken or to be taken in connection therewith shall be terminated and shall become void and have no further force and effect except for the obligation of defendants to pay for any expense incurred in connection with the Notice and administration of the Settlement.

10. In the event that the Settlement as provided for in this Stipulation is not finally approved by the Court, or does not become effective for any reason other than the failure of any settling party to perform such party's obligations hereunder, then the Stipulation shall become null and void and of no further force and effect, and all negotiations, proceedings, and

statements relating thereto shall be without prejudice as to the rights of any and all parties hereto and their respective predecessors and successors, and all parties and their respective predecessors and successors shall be restored to their respective positions existing at the date of the Stipulation.

11. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, or deemed to be evidence of, an admission or concession on the part of the Settling Defendants, of any liability of or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding, or used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature on the part of the Settling Defendants, and shall not be construed as or deemed to be evidence of, an admission or concession that the plaintiffs or any member of the Settlement Class have suffered any damage; and shall not be construed as, or deemed to be evidence of, an admission or concession on the part of the plaintiffs or any member of the Settlement Class that any of their claims asserted in the Delaware Actions are without merit or that damages recoverable in the Delaware Actions are without merit or that damages recoverable in the Delaware Actions do not exceed the aggregate of the amounts payable pursuant to this Stipulation.

12. Each of the attorneys executing this Stipulation on behalf of one or more parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of each such respective party.

13. Without further Order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

14. This Stipulation, including all Exhibits annexed hereto, constitutes the entire agreement among the parties with regard to the subject matter thereof. This Stipulation may not be modified or amended except in writing signed by all signatories hereto or their successors in interest.

15. This Stipulation upon becoming operative shall be binding upon and inure to the benefit of the settling parties hereto and their respective heirs, executors, administrators, successors and assigns and upon any corporation, partnership or other entity into or with which any settling party hereto may merge or consolidate.

16. This Stipulation may be executed in any number of actual or telecopied counterparts and by the different settling parties hereto on separate counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual or telecopied counterpart may be joined together and attached to one such original and shall constitute one and the same instrument.

17. The waiver by any party of any breach of this Stipulation shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Stipulation.

18. This Stipulation shall be construed and enforced in accordance with the laws of the State of Delaware.

Dated: Wilmington, Delaware
October 22, 1992

ROSENTHAL, MONHAIT GROSS & GODDESS, P.A.
First Federal Plaza
Wilmington, DE 19801

By: /s/
Liaison Counsel for Settling Plaintiffs

Of Counsel:

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Plaintiffs' Lead Counsel

Of Counsel:

WACHTELL, LIPTON, ROSEN & KATZ
299 Park Avenue
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1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899

By: /s/
Attorneys for Defendant MCA INC. and the Individual Defendants

Of Counsel:

SIMPSON THACHER & BARTLETT
(a partnership which includes professional corporations)

RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

By: /s/
Attorneys for Defendant Matsushita Electric Industrial Co., Ltd., Matsushita Holding Corp., and Matsushita Acquisition Corp.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

---x

IN RE MCA INC. SHAREHOLDERS LITIGATION	:	CONSOLIDATED C.A. NO. 11740

---x

HEARING ORDER

The parties to the consolidated actions (the "Actions") having made application pursuant to Rule 23(e) of the Rules of the Court of Chancery, for an Order approving the proposed settlement of the Actions (the "Settlement") in accordance with a Stipulation of Settlement filed with the Court (the "Stipulation"), which, together with the accompanying documents, sets forth the terms and conditions for the proposed settlement of the Actions and for the dismissal of the Actions with prejudice upon the terms and conditions set forth in the Stipulation; and the Court having read and considered the Stipulation and accompanying documents; and all parties having consented to the entry of this Order:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Actions shall, for the purposes of the Settlement only, be maintained and proceed as a consolidated class action with the named plaintiffs in the Actions as class representatives, pursuant to Court of Chancery Rules 23(a) and 23(b)(3), on behalf of the following class (the "Settlement Class" and the "Class Period"): all holders of the common stock of MCA INC. ("MCA"), on or after September 25, 1990, through and including effectuation of the Merger (as defined in ¶ D(i) of the Stipulation) on January 3, 1991, and their successors in interest, immediate or remote (excluding defendants and member of their immediate families). The Court determines, for purposes of the Settlement only, that the requirements of Court of Chancery Rules 23(a) and 23(b)(3) are satisfied.

2. A hearing (the "Settlement Hearing") shall be held before the Court on January 21, 1993, at 12:00 noon in the Court of Chancery, Public Building, 11th and King Streets, Wilmington, Delaware 19801: (a) to determine whether the proposed Settlement of the Actions on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be approved by the Court, and whether a judgment as provided in paragraph 5 of the Stipulation should be entered thereon; and (b) to consider the application of plaintiffs' counsel in the Actions for an award of fees and expenses. The Court may adjourn the Hearing, or any adjournment thereof, without further notice to members of the Settlement Class other than by announcement at the Hearing or any adjournment thereof.

3. The Court approves, in form, the Notice of Pendency of Class Actions, Class Action Determination, Proposed Settlement of Class Actions, Settlement Hearing, Right to Request Exclusion and Right to Appear (the "Notice"), attached as Exhibit B to the Stipulation, and the Summary Notice of Class Action Determination, Proposed Settlement of Class Actions and Settlement Hearing (the "Summary Notice"), attached as Exhibit C to the Stipulation, and finds that the mailing of the Notice and the publication of the Summary Notice in substantially the manner and form set forth in paragraph 4 of this Order meets the requirements of Court of Chancery Rule 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

4. (a) Within 14 days of this Order, defendants shall cause a copy of the Notice to be mailed by first class mail to all persons and entities appearing on the Company's transfer records as record holders of the common stock of the Company as of the close of business between September 25, 1990, and December 28, 1990 (the last trading day prior to the effectuation of the Merger on January 3, 1991), both dates inclusive. Defendants shall also use reasonable efforts to give notice to the beneficial owners of the Company's common stock who were such owners on or after September 25, 1990, and their

successors in interest, immediate or remote, by making additional copies of the Notice available to any record holder requesting same for the purpose of distribution to such beneficial owners. Defendants shall offer to pay the reasonable costs of nominees incurred in compiling a list of the names and addresses of said beneficial owners and/or forwarding copies of the Notice to them.

(b) The Summary Notice, substantially in the form annexed to the Stipulation as Exhibit C shall be published in the national edition of the *Wall Street Journal* within ten days of the mailing of the Notice.

(c) At or prior to the Settlement Hearing provided for in paragraph 2 of this Order, defendants shall file proof, by affidavit, of such publication and mailings.

5. Any member of the Settlement Class who has not requested exclusion from the Settlement Class may appear personally at the Settlement Hearing or by counsel, provided that an appearance is served and filed as hereinafter provided, and show cause, if any, why the Settlement of the Actions should not be approved as fair, reasonable, and adequate, why judgment should not be entered dismissing with prejudice all claims of all plaintiffs and all members of the Settlement Class against any or all defendants (and related entities, including affiliates), or why the Court should not grant an allowance of reasonable fees and expenses to plaintiffs' counsel for their services herein and actual expenses incurred. However, unless the Court otherwise directs, no member of the Settlement Class, or any person (excluding a party), shall be heard or shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the judgment to be entered thereon, or the allowance of fees and expenses to plaintiffs' counsel, and no papers or briefs submitted by any member of the Settlement Class or any other person (excluding a party) shall be received and considered, except by Order of the Court for good cause shown, unless, no later than twenty (20) days prior to the Settlement Hearing, the following documents are served and filed in the

manner provided below: (a) a notice of intention to appear; (b) a detailed statement of such person's specific objections to any matter before the Court; (c) proof of membership in the Settlement Class; and (d) the grounds for such objections and any reasons why such person desires to appear and to be heard, as well as all documents and writings which such person desires this Court to consider. Such documents shall be served upon the following counsel prior to filing such documents with the Court, and then filed with the Register in Chancery, Court of Chancery, Public Building, 11th and King Streets, Wilmington, Delaware 19801:

Joseph A. Rosenthal, Esq.
ROSENTHAL, MONHAIT, GROSS
& GODDESS, P.A.
First Federal Plaza
P.O. Box 1070
Wilmington, Delaware 19899

On Behalf of All Plaintiffs

Martin P. Tully, Esq.
MORRIS, NICHOLS, ARSHT &
TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 10900

On Behalf Of Defendant MCA Inc.
And The Individual Defendants

-and-

R. Franklin Balotti, Esq.
RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899

On Behalf Of Defendants Matsushita Electric Industrial Co., Ltd., Matsushita Holding Corp. Matsushita Acquisition Corp.

Any person who fails to object in the manner provided herein shall be deemed to have waived his, her or its objections and shall forever be barred from making any such objections in these Actions or in any other action or proceeding.

6. All members of the Settlement Class have the option of excluding themselves from the Settlement Class by mailing a timely and valid Request for Exclusion postmarked not later than twenty (20) days prior to the Settlement Hearing addressed to In Re MCA INC. Shareholders Litigation, P.O. Box 92, Wilmington, DE 19899. A Request for Exclusion must set forth the following information with respect to the person or entity requesting exclusion: name, address, social security number or taxpayer identification number, the amount of all MCA common stock owned by such person or entity during the Class Period (i.e., the number of shares held or purchased on September 25, 1990 to January 3, 1991, the date of each purchase or sale (if any) during such period and the number of shares in any such transaction). All Requests for Exclusion must be signed by or on behalf of the person or entity so requesting exclusion.

7. If a Request for Exclusion does not include all of the foregoing information, it shall not be a valid Request for Exclusion and the person or entity filing an invalid Request for Exclusion shall be a member of the Settlement Class. All persons who properly file Requests for Exclusion from the Settlement Class shall not be members of the Settlement Class

and shall have no rights with respect to the Settlement and no interest in the Settlement Fund.

/s/

Vice Chancellor

October 27, 1992

IN THE COURT OF CHANCERY OF
THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE MCA INC. SHAREHOLDERS LITIGATION	:	CONSOLIDATED
	:	C.A. No. 11740

ORDER AND FINAL JUDGMENT

On this 22 day of February, 1993 a hearing having been held before this Court to determine whether the terms of the Stipulation of Settlement dated October 22, 1992 (the "Stipulation"), and the terms and conditions of the settlement proposed in the Stipulation (the "Settlement"), and all transactions referred to therein or preparatory or incident thereto, are fair, reasonable and adequate for the settlement of all claims asserted herein; and whether judgment should be entered in these civil actions (the "Actions") dismissing the Actions on the merits with prejudice as against all of the plaintiffs and all members of the Settlement Class certified in this Court's Order dated October 27, 1992; and the Court having considered all matters submitted to it at the hearing and otherwise and the Court having rendered its Memorandum Opinion dated February 12, 1993 approving the Settlement and awarding attorneys' fees and expenses:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Notice and Summary Notice (as defined in ¶ 4(b) of the Stipulation), is hereby determined to have been the best practicable notice under the circumstances and in full compliance with Rule 23 of the Court of Chancery and the requirements of due process and it is hereby further determined that the plaintiffs in the Actions, as representatives of the Settlement Class, have fairly and adequately protected the interests of the Settlement Class and that the maintenance of this action

as a class action meets all the requirements of Rule 23(a) and (b)(3) of the Court of Chancery.

2. The Stipulation and the Settlement are approved as fair, reasonable and adequate and in the best interests of the plaintiffs and the Settlement Class, and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, provided that any additional Requests for Exclusion received after the deadline set in paragraph 6 of the Hearing Order dated October 7, 1992 but prior to February 12, 1993 will be effective.

3. (a) The Actions are hereby dismissed with prejudice on the merits as to all defendants in the Actions (regardless of whether any such defendant has been served or entered an appearance in any of the Actions) and their respective present and former officers, directors, employees, agents, attorneys, financial advisors, commercial bank lenders, investment bankers, representatives, trustees, affiliates, associates, parents, subsidiaries, general and limited partnerships, heirs, executors, administrators, successors and assigns (including Lazard Freres & Co. (financial advisor to MCA), Allen & Co. Inc. (financial advisor to Matsushita) and Creative Artists Agency Inc. (advisor to Matsushita)) (collectively, the "Released Persons"), as against plaintiffs and all members of the Settlement Class (other than those who have validly requested exclusion therefrom) and their successors and assigns, whether known or unknown, whether directly or in any other capacity, without costs except as provided in the Stipulation, such dismissal to be subject only to compliance by the parties with the terms and conditions of the Stipulation and any Order of this Court with reference to the Stipulation.

(b) All claims, rights and causes of action (state or federal, including but not limited to claims arising under the federal securities laws, any rules or regulations promulgated thereunder, or otherwise), whether known or unknown that are, could have been or might in the future be asserted by any of the plaintiffs or any member of the Settlement Class (other than those who have validly requested exclusion therefrom),

whether directly, derivatively, representatively or in any other capacity, against any of the Released Persons or against anyone else in connection with or that arise now or hereafter out of the Merger Agreement, the Tender Offer, the Distribution Agreement, the Capital Contribution Agreement, the employee compensation arrangements, the Tender Agreements, the Initial Proposed Settlement, this Settlement (except for compliance with the Settlement), or any matters, transactions or occurrences referred to in the December 4, 1990 Claim Letter and the Amended Complaint in the Action, or the fiduciary or disclosure obligations of any of the Released Persons with respect to any of the foregoing, and including without limitation the claims asserted in the California Federal Actions, the Second *Minton* Action and the Second *Epstein* Action (all as defined in the Stipulation) (all of which are hereinafter collectively referred to as the "Settled Claims") are hereby compromised, settled, released and discharged with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

4. The plaintiffs and all members of the Settlement Class (other than those who have validly requested exclusion therefrom), their successors and assigns, whether acting directly, derivatively, representatively or in any other capacity, are hereby permanently barred and enjoined from instituting or prosecuting any other action in any court of this or any other jurisdiction based upon, relating to, or for the purpose of enforcing any of the Settled Claims.

5. Plaintiffs' attorneys of record herein are hereby awarded the sum of $250,000 in fees and reimbursement of expenses in connection with the Actions, which sum the Court finds to be fair and reasonable and which shall be paid to plaintiffs' attorneys according to the terms set forth in the Stipulation. Said sum shall accrue interest and be paid in accordance with paragraph 8 of the Stipulation.

/s/

Vice Chancellor

Nos. 92-55675, 92-55632, 92-55288

In The
United States Court of Appeals
FOR THE NINTH CIRCUIT

LAWRENCE EPSTEIN, *et al.*,

Plaintiffs-Appellants,

v.

MCA INC., *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV-90-6451-R
HONORABLE MANUAL REAL

PLAINTIFFS-APPELLANTS' DECLARATION TRANSMITTING DELAWARE DOCUMENTS RELEVANT TO COURT'S ORDER FOR FURTHER BRIEFING

HENRY PAUL MONAGHAN
435 West 116th Street
New York, New York
10027(212) 854-2644

IRVING MALCHMAN
Roger W. Kirby
KAUFMAN MALCHMAN KIRBY & SQUIRE
919 Third Avenue
New York, New York 10022
(212) 371-6600

Nos. 92-55675, 92-55632, 92-55288

In The United States Court of Appeals
FOR THE NINTH CIRCUIT

LAWRENCE EPSTEIN, et al.,

Plaintiffs-Appellants,

v.

MCA INC., et al.,

Defendants-Appellees.

On Appeal From the United States
Court For the Central District of California

DECLARATION OF HENRY P. MONAGHAN TRANSMITTING DELAWARE DOCUMENTS RELEVANT TO COURT'S ORDER FOR FURTHER BRIEFING

I, HENRY P. MONAGHAN, declare:

1. I am an attorney duly admitted to practice before this Court. I am co-counsel for the Epstein appellants herein. I submit this declaration in support of plaintiffs-appellants' brief on preclusion.

2. Attached to this declaration are a true and correct copy of:

a. The shareholders' class action complaint in *Lazar et al. v. MCA Inc. et al.*, Civil Action No. 11740, dated September 26, 1990 (Exhibit A).

b. A letter dated December 4, 1990 from Steven Schulman and David Bershad to Herbert M. Wachtell (Exhibit B).

c. The amended stockholders' class action complaint in *In re MCA Inc. Shareholders Litigation*, dated December 14, 1990 (Exhibit C).

d. The notice to the class in the Delaware action, dated December 18, 1990 (Exhibit D).

e. Reporter's transcript of hearing before the Delaware chancery court on January 30, 1991 (Exhibit E).

f. The Delaware chancery court's memorandum opinion in *In re MCA Inc. Shareholders Litigation*, 598 A.2d 687 (Del. Ch. April 22, 1991) (Exhibit F);

g. A stipulation and agreement of compromise and settlement in the Delaware action, dated October 22, 1992 (Exhibit G).

h. The notice to the class in the Delaware action, dated October 27, 1992 (Exhibit H).

i. Reporter's transcript of hearing before the Delaware chancery court on January 21, 1993 (Exhibit I).

j. The Delaware chancery court's memorandum opinion in *In re MCA Inc. Shareholders Litigation*, 1993 WL 4324 (Del. Ch. Feb. 16, 1993) (Exhibit J).

k. Notice of appeal in the Delaware action, dated March 25, 1992 (Exhibit K).

l. The docket sheet in the Delaware action, as of August 18, 1993 (Exhibit L).

m. An article by John C. Coffee, Jr., entitled *Suspect Settlements in Securities Litigation*, New York Law Journal, Page 5, Col. 1, dated March 28, 1991 (Exhibit M).

n. The Delaware plaintiffs' memorandum in support of proposed settlement in *In re MCA Inc. Shareholders Litigation*, dated January 19, 1993 (Exhibit N).

o. Affidavit of Roger W. Kirby in support of plaintiffs' motion for summary judgment and concerning a possible Delaware release (without exhibits), dated December 14, 1990 (Exhibit O).

I declare that the foregoing is true and correct under the pains and penalties of perjury.

/s/

HENRY P. MONAGHAN

Dated: New York, New York
August 30, 1993

MILBERG WEISS BERSHAD SPECHTRIE & LERACH

[Remainder of Letterhead Omitted]

December 4, 1990

VIA TELECOPY & BY HAND DELIVERY

Herbert M. Wachtell, Esq.
Wachtell, Lipton, Rosen & Katz
299 Park Avenue
New York, New York 10171

Re: In re MCA Inc. Shareholders Litigation,
Consol. C.A. No. 11740 (Del. Ch.)

Dear Mr. Wachtell:

This will summarize the principal grounds on which plaintiffs intend to rely in seeking preliminary injunctive relief. The nature of the relief sought will also be described. By agreement with you, this letter will substitute for the filing of an amended and/or supplemental complaint by Tuesday, December 4, 1990. Plaintiffs have not yet received all documents requested from the parties and non-party witnesses and have not yet taken any depositions. Therefore, plaintiffs reserve the right to modify and/or supplement the following summary as the discovery proceeds and briefing on the motion is conducted. In addition, plaintiffs further reserve the right to modify and/or supplement their legal analysis as the facts develop.

To begin with, plaintiffs will argue that defendants have breached their fiduciary duties of complete candor in connection with the tender offer materials issued by both MCA and Matsushita with respect to the tender offer. MCA has distributed the Offer to Purchase to its shareholders together with the Schedule 14D-9 Solicitation/Recommendation Statement and Matsushita has the right under Section 4.06 of the Merger Agreement to "review and comment" upon disclosure materials of MCA in connection with the transaction. Therefore, plaintiffs allege that both Matsushita and MCA are jointly

responsible for the inadequate disclosures provided to MCA shareholders in connection with the transaction.

Plaintiffs further contend that the management arrangements regarding benefits and compensation are deceptively presented in the disclosure materials. For example, Mr. Sheinberg and other members of senior management who occupy seats on the Board of Directors or exercise substantial responsibilities in managing and supervising MCA are to be provided with immense cash bonuses in connection with the acquisition in addition to receiving enormous increases in their basic compensation. These massive payments are presented as substantially equivalent to the incentive compensation that these officers/directors otherwise would have received in the ordinary course and are also presented as having been insisted upon by Matsushita as a means of assuring management continuity. Plaintiffs allege and will seek to demonstrate that the bonuses are far greater than their recipients could have expected to receive in the ordinary course and that management insisted upon such benefits as the price of its willingness to negotiate with Matsushita. Plaintiffs will also seek to demonstrate that Matsushita willingly agreed to pay and may well have encouraged the payment of such compensation because of its expectation that this would vastly limit the independence of senior management and the Board of Directors in negotiating with Matsushita and thereby save the purchaser potentially hundreds of millions or billions of dollars in acquisition costs that a fully disinterested MCA Board would have insisted upon. The portrayal of the management benefits as consistent with ordinary practice and as proceeding from the wishes of the purchaser to secure the services of the present officers and directors is materially false and deceptive and calculated to present a neutral or positive impression of special arrangements which create serious conflicts of interest that the parties have attempted to conceal.

Plaintiffs also contend and will seek to demonstrate that Mr. Wasserman's planned equity participation in "Holdings" following completion of the acquisition establishes that the parties are engaged in a form of "going-private" transaction

subject to the disclosure requirements of Rule 13e-3 of the Exchange Act. However, the parties have not made the required filings with the SEC which would be made were they proceeding in accordance with Rule 13e-3. In particular, the Lazard Freres investment banker's "book" has not been made publicly available as would otherwise be the case were the parties proceeding in accordance with the requirements for a going-private transaction. Material information regarding the fairness and adequacy of the proposed transaction has consequently been withheld from the investing public. Plaintiffs will argue that the Delaware duties of complete candor incorporate the requirement to make available in connection with a "going-private" transaction the materials required by Rule 13e-3.

Plaintiffs further contend that the defendants have misleadingly concealed their intention to retain effective control over WWOR-TV following the spinoff and prevent the emergence of market forces which could generate a sale of this division at a price representing genuinely maximum value for the shareholders. Although the tender offer materials appear to suggest that the television station will be open to bidders, the provision for a board of directors following the spinoff which will be dominated by members of MCA senior management and the planned implementation of a shareholder rights plan or "poison pill" in a form satisfactory to MCA and Matsushita have both the purpose and effect of entrenching in the control of WWOR-TV the MCA designees whom defendants actually seek to protect from any challenge to their control following the Matsushita takeover. The offering materials deceptively conceal these facts which are contrary to the fundamental obligation of the defendants to seek and arrange the best possible transaction in connection with the change in control.

Plaintiffs also contend that the shareholders are being denied significant and material information regarding the operating segments of MCA which has been provided to the purchaser but has not been shared with the stockholders on an equivalent basis. The offering materials claim that this information would not be "material" to shareholders but this is

simply a self-serving assertion which itself is false and misleading in view of the obvious importance of this information to shareholders seeking to make a reasoned election between accepting the purported benefits of the tender offer or a statutory appraisal proceeding.

Finally, plaintiffs contend that the tender offer materials are seriously deficient in their failure to disclose prior market contacts between MCA and other potential purchasers which would indicate the level of market interest MCA could command in an open and effective auction. Plaintiffs believe and will seek to demonstrate that other potential purchasers were rebuffed when they refused to provide the management benefits and other concessions to management to which Matsushita has acceded. Knowledge of those prior market contacts would, therefore, materially assist the shareholders in assessing the fairness and adequacy of the current proposal and in appreciating the significant extent to which conflicts of interest or potential conflicts have impeded the success of prior bids or expressions of interest. Shareholders are similarly entitled to be informed of other possible alternatives which could have been explored but were not.

Plaintiffs further contend that the proposed transaction violates defendants' fundamental duties enunciated in *Revlon*. Under *Revlon* the MCA directors must act with the single objective of obtaining the highest possible price in connection with the sale of the corporation. The Court will find a violation of *Revlon* if the record demonstrates that the directors have not acted reasonably to attain this goal. *See Roberts v. General Instrument Corp.*, Del. Ch., CA. No. 11639, Allen, C. (Aug. 13, 1990).

While the burden is ordinarily upon the plaintiff to demonstrate that the directors have failed to act reasonably to attain this goal, the burden of proof must shift in this case because more than a majority of the directors have financial or other conflicting interests in the success of the transaction. Senior management are eligible to receive bonus and compensation payments immensely greater than they would otherwise

receive under their present contracts. Mr. Wasserman has negotiated a very favorable arrangement in connection with the sale which will insulate him from costly capital gains taxes. Mr. Strauss lacks independence because of the dual representation by his law firm of Matsushita and MCA and in fact abstained from voting on the transaction. Mr. Baker similarly lacks independence because of the substantial payments made to his law firm in connection with the transaction. In addition, Lazard's "fairness" opinion is unreliable because of the agreement which Lazard has arranged by which Lazard receives multi-million dollar advisory fees contingent upon the completion of the acquisition transaction. Mr. Rohatyn cannot claim any objectivity with respect to his support for the transaction because of the multi-million dollar fees which Lazard will receive in the event that a sale is consummated. The remaining directors who apparently have no financial stake in the transaction constitute a minority of the MCA Board.

Therefore, the defendants unquestionably bear the burden of demonstrating the fairness and adequacy of the transaction under the enhanced requirements imposed by *Revlon*. Plaintiffs submit that defendants will be unable to satisfy this burden. Their failure to form a special committee charged with negotiating and approving the transaction has denied the corporation and its shareholders of any truly independent representation in connection with the formulation of the terms of the merger. The directors have also failed to engage in a sufficient "market check" necessary to assure the fairness and adequacy of the merger terms. Since the commencement of discussions and negotiations with Matsushita in or about September 1990, MCA has been prevented from soliciting any competitive expressions of interest or purchase proposals. In addition, the parties have clearly rejected any post-agreement "market check" by virtue of their refusal to extend the tender offer beyond the minimum required under federal regulations and their agreement to a stock lock-up and break-up fees and expense reimbursement among other restraints which prevent any genuine auction from developing. MCA remains prohibited from soliciting competitive expressions of interest and while MCA may respond to any

competitive proposals which are made, the limited time available and obvious allegiances of management and the Board of Directors must inevitably discourage genuine competitive bids from emerging.

Certain other aspects of the transaction confirm the fundamental failure of the MCA directors to obtain the best possible transaction unaffected by conflicts of interest. In order to facilitate the transaction with Matsushita, they have arranged to spinoff the WWOR-TV subsidiary to stockholders rather than investing the additional time and effort necessary to auction this subsidiary at the highest possible price and thereby generate maximum proceeds for the shareholders. In addition, the merger documents contemplate that the spinoff corporation will adopt a "poison pill" in form acceptable to Matsushita and MCA. If this subsidiary were genuinely to be independent, it would be unnecessary to incorporate such provision in the agreements. It can only be concluded that the implementation of the poison pill under these circumstances is intended to prevent the emergence of an open and effective auction for the television station and to assure that those persons chosen by the principals to manage the station will confront no challenge to their control.

Again, because of political sensitivities, the MCA directors have agreed to an arrangement whereby the Yosemite subsidiary will be marketed at some later time and its earnings prior to sale will be placed in escrow for the benefit of the National Park Service. While such charitable objectives are often to be lauded, in this case the escrowing of the Yosemite profits for an indeterminate period is clearly calculated to assuage public sentiment concerning the transaction and allow the principals to achieve their personal agenda in consummating the sale under the terms agreed. A sale to another purchaser may not engender such public sensitivities and under those circumstances the Yosemite proceeds and the value of that subsidiary would unquestionably be reserved for the shareholders.

Thus, the company has failed to engage in the probing of the market which is necessary to assure the fairness and adequacy of the merger terms and has instead negotiated on a preferential basis with Matsushita without the auction or other open bidding procedure best calculated to achieve maximum value in connection with the sale of control. As a result, the defendants cannot meet their burden of demonstrating that they have satisfied their fiduciary obligations to arrange the best possible transaction under the circumstances and avoid or eliminate conflicts or potential conflicts of interest which may detract from achieving this objective.

Lastly, plaintiffs contend and will seek to demonstrate that Mr. Wasserman has impermissibly negotiated preferential arrangements in connection with the transaction by which he will exchange stock for stock and avoid costly capital gains taxes to which all other stockholders are subject. Plaintiffs will seek to show that Mr. Wasserman's negotiation of and agreement to such preferential provisions violated his fiduciary duty of loyalty and that the conflicted Board could not and did not properly ratify the transaction.

Consequently, it is the position of plaintiffs that the present transaction fails to meet the requirements of Delaware law both with respect to the disclosures made in attempting to induce the tender of shares and the actions and omissions of the directors in attempting to sell the corporation under circumstances which amount to an abdication of their responsibilities to seek the maximization of shareholder value and fulfill the best interests of the shareholders.

As relief, plaintiffs will seek an interim delay in the closing of the tender offer and the issuance of corrective disclosures intended to cure the deficiencies identified above. In addition, plaintiffs will seek an extension of the tender offer and the implementation of corporate mechanisms which will assure that the sale process is controlled by fully independent and objective directors or other representatives of the corporate and shareholder interests who will act strictly in the interests of maximizing shareholder value and assuring that all

appropriate alternatives have been explored prior to consummating the sale transaction. Among other things, plaintiffs will seek the selection of a truly independent special committee untainted by the conflicts of interest identified above and will also seek the removal of the impediments to fair and open bidding, such as the stock lock-up and break-up fees and expense reimbursement and no-shopping pledges contained in the present agreement, which are hindering the bidding process from emerging.

Very truly yours,

MILBERG WEISS BERSHAD
SPECTHRIE & LERACH

By: /s/

David J. Bershad
Steven G. Schulman

ABBEY & ELLIS
212 East 39th Street
New York, New York 10016

BERGER & MONTAGUE
1622 Locust Street
Philadelphia, PA 19103

WOLF POPPER ROSS WOLF AND JONES
845 Third Avenue
New York, New York 10022

cc: Barry Ostrager, Esq. (via telecopy)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

IN RE MCA, INC.	)	Consolidated
SHAREHOLDERS LITIGATION	)	C. A. No. 11740

Courtroom No. 107
Public Building
Wilmington, Delaware
Wednesday,
January 30, 1991,
11:00 A. M.

BEFORE:

HON. MAURICE A. HARTNETT, III, Vice Chancellor.

SETTLEMENT HEARING

[2] APPEARANCES:

JOSEPH A. ROSENTHAL, ESQ.,
Morris, Rosenthal, Monhait & Gross, P. A.
-and-
STEVEN G. SCHULMAN, ESQ.,
(New York Bar)
Milberg Weiss Bershad Specthrie & Lerach
-and-
STANLEY R. WOLFE, ESQ.,
(Pennsylvania Bar)
Berger & Montague
-and-
MARK C. GARDY, ESQ.,
(New York Bar)
Abbey & Ellis

For the Plaintiff.

A. GILCHRIST SPARKS, III, ESQ.,
Morris, Nichols, Arsht & Tunnell,
-and-

PAUL K. ROWE, ESQ.,
(New York Bar)
Wachtell, Lipton, Rosen & Katz

For the Defendants MCA and the Individual Defendants.

R. FRANKLIN BALOTTI, ESQ.,
Richards, Layton & Finger,
-and-
MARY KAY VYSKOCIL, ESQ.,
(New York Bar)
Simpson Thacher & Bartlett

For Matsushita Electric Industrial Co. Ltd.

CRAIG B. SMITH, ESQ.,
Lassen, Smith, Katzenstein & Furlow,
For the Objectors.

* * *

MR. SCHULMAN:

[16] And having this understanding of the framework between state and federal, and looking at the regulations carefully, we concluded that any 10b-13, 14D-7 claim was frivolous, should not be pursued, would be distracting in the main litigation, and would be a waste of our time and resources when we had a big battle with the defendants underway on the issues of Delaware law.

* * *

[23] So looking at these facts, and evaluating them from the standpoint of the recent decisions from this Court which have interpreted Revlon, Your Honor's decision in the Envirodyne case, Chancellor Allen's decision in the General Instrument case, Vice Chancellor Jacobs' decision in Formica and a slew of others, it was our conclusion that the Court would likely conclude -- not necessarily, but would likely have concluded both at preliminary injunction and trial that the [24] directors had acted reasonably to put in place a procedure that would

achieve the best value, and that a defacto market check had in fact already taken place.

* * *

[31] Although stating valid claims under Delaware law, we were satisfied that we would not be able to prevail in all like likelihood on these Wasserman claims under Delaware law, much less under federal law.

* * *

THE COURT: Anything else?

(No response)

Very well. I'll reserve decision, and advise counsel.

We stand in recess.

[Certificate of authentication by Reporter omitted]

IN THE COURT OF CHANCERY OF THE STATE OF
DELAWARE IN AND FOR NEW CASTLE COUNTY

IN RE MCA INC.
SHAREHOLDERS LITIGATION) C.A. No. 11740

- - -

Courtroom No. 106
Public Building
Wilmington, Delaware
Thursday, Jan. 21, 1993
12:04 p.m.

- - -

BEFORE: HON. MAURICE A. HARTNETT, III,
Vice Chancellor.

- - -

ARGUMENT ON PLAINTIFFS' APPLICATION
FOR APPROVAL OF A SETTLEMENT
AND ATTORNEYS' FEES

- - -

[2] APPEARANCES:

JOSEPH A. ROSENTHAL, ESQ.
Rosenthal, Monhait,
Gross & Goddess, P.A.
Liaison Counsel for the Plaintiffs.

STEPHEN G. SCHULMAN, ESQ. (New York Bar)
Milberg Weiss Bershad Specthrie & Lerach
Lead Counsel for the Plaintiffs.

MARTIN P. TULLY, ESQ.
Morris Nichols Arsht & Tunnell
-and-
THEODORE M. MIRVIS, ESQ. (New York Bar)
Wachtell Lipton Rosen & Katz
for the MCA Defendants.

DAVID L. RENAULD, ESQ.
Richards Layton & Finger
-and-

PAUL C. CURNIN, ESQ. (New York Bar)
Simpson Thacher & Bartlett
for the Matsushita Defendants.

CRAIG B. SMITH, ESQ.
Smith, Katzenstein & Furlow
for Objectors, Marian Minton and Pamela Minton
de Ruiz.

JAMES H. ALLYN, ESQ. (New York Bar)
for Objector, William A. Krupman.

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[3] *PROCEEDINGS*

THE COURT: You may proceed.

MR. ROSENTHAL: Good morning, your Honor. Or good afternoon, I guess. It's just a bit past the hour of noon.

This is the time fixed for hearing the proposed settlement of the MCA Shareholders Litigation. With your Honor's permission, Steven Schulman of the New York Bar will make the presentation on behalf of the plaintiffs. He has already been admitted pro hac vice in this action.

I'll just mention a few housekeeping matters before I turn the rostrum over to Mr. Schulman.

First, the Register's file contains the appropriate affidavit showing that the notice of these proceedings was mailed in conformity with your Honor's order calling for the sending of notice and the holding of this hearing, and also that notice of this hearing was published in conformity with that order as well.

As I said before, it's a bit past the hour when the hearing was to commence, and I think the record should show that the

only persons in the [4] courtroom are court personnel, counsel for the parties, Mr. Smith and Mr. Allyn, who represent certain objectors, and no one else to appear here to oppose either the proposed settlement or application for attorneys' fees which the plaintiffs would like to submit today.

The only other person in the room is somebody in the back, who is here just to observe. She's not a member of the class, as far as I know.

With that, your Honor, I would turn the rostrum over to Mr. Schulman.

MR. SCHULMAN: Good afternoon, your Honor.

I would respectfully request to reserve five minutes of rebuttal time of the time allotted.

We are here today to propose a renewed settlement of this litigation which we believe is directly responsive to the Court's concerns, analysis and evaluation in its previous MCA decision in this matter.

I need not recount the procedural history. The Court addressed that in its prior opinion. Suffice it to say that actions were filed in September '90 in this Court. They embraced all [5] aspects of the proposed merger and tender offer. The matter was very actively litigated through discovery. A preliminary injunction hearing was scheduled for December of 1990, but at that time the parties entered into a settlement agreement which was submitted for court approval.

The Court did not approve the initial proposed settlement in this matter, but in that opinion gave its guidance as to the areas that we understood required addressing. It is our position that those issues have been addressed with respect to the settlement that is before your Honor today.

In brief, the settlement contemplates the creation of a $2 million cash fund distributable to former MCA shareholders who either tendered into the tender offer of Matsushita or were merged out in the subsequent second-step merger.

In contrast, the prior settlement contemplated certain therapeutic changes in the rights plan of a spin-off entity known as Pinelands, which the Court found at that time problematic in value and of insufficient value to provide the predicate for a global settlement.

A second salient difference between the [6] current settlement and the prior settlement is that class members who wished to exclude themselves from the binding effect of this settlement and any class action determination by the Court with respect to the settlement are afforded a right to opt out of the settlement pursuant to Chancery Court Rule 23(b)(3). This is an opt-out settlement case.

The Court will recall that a great deal of time and effort was spent at the last hearing on the issue whether the settlement clause should be a non-opt-out or opt-out clause. There are cases in this Court that set forth very stringent standards and difficult criteria in that regard. Those issues no longer exist with respect to this settlement, as an opt-out right has been afforded.

[7] I would add that in order to make the opt-out right maximally meaningful it was negotiated in connection with the settlement that not only would there be mailed notice, but that, uncommonly in these types of situations, there would also be a publication notice in the Wall Street Journal, which did take place. This was done with the intention of assuring that the opt-out right would be maximally meaningful in this situation.

I would add that despite the number of objections that have come to the Court and the intensity of the rhetoric, there is no challenge here to the contents of either notice. There is no challenge to full disclosure in that notice. And therefore there can be no question that those shareholders who have elected to opt out or, alternatively, remain in the class -- and while some have opted out, they are relatively small in number. There can be no question that that was based on full information, and that those who remained in the Court should deem it informed consent.

With respect to the procedural posture of the case, there is another fundamental difference as to where we are now as to where we were two years ago. The Court at that time was concerned that the federal securities claims which we sought to settle as part of the global settlement, claims asserted in California federal court under Rules 10b-13 and 14d-10 of the Securities Exchange Act, had not yet been adjudicated. Indeed, those cases were in a relatively early phase at that time. The Court concluded in its prior opinion that based on that lack of an adjudication, that those claims had what [8] the Court referred to as "arguable merit."

Those claims have now been adjudicated. They have been adjudicated on the basis of a full record, full discovery, extensive motion practice and adversarial proceedings of the fullest extent. Plaintiffs in that case have been losers on each and every issue that they asserted in that proceeding. Their claims have failed.

In brief, summary judgment has been granted by Judge Real with respect to the claims against Mr. Wasserman, Mr. Sheinberg, MCA. Judge Real concluded that there is no private right of action under SEC Rule 10b-13 and that the Wasserman transaction did not fall afoul of Rule 14d-10 because it was negotiated and entered into before the tender offer period and consummated thereafter.

This ruling was based on findings of fact and stipulated facts and extensive discovery and a legal analysis of the cases, some of which were before your Honor at that time, and other subsequent authorities, such as the Kahn case in the Eastern District of Virginia and the Second Circuit affirmance in the Kramer case, all of which convincingly demonstrate that a private transaction [9] entered into outside a tender offer period shall not be integrated with a tender offer to make the private transaction in any way subject to either the Sithe purchase or best price provisions of 10b-13 and 14d-10 respectively.

As significantly, if not more so, the federal plaintiffs in California sought class certification. This was twice fully and

finally denied by Judge Real on all Rule 23 criteria. There is no class in the so-called "federal class actions." Thus, absent class members cannot, in the present posture or in any posture that I can envision, have any benefit from that proceeding. The persons who might benefit, if at all, if a number of remote scenarios took place, would be the individual plaintiffs, and even there they must obtain a reversal of their decisions in that court. But the fundamental fact is that class certification has been denied, and for the many thousands of MCA shareholders, all of whom have elected not to opt out, other than the few who have opted out, there is no prospect of recovery in that case because it's not a class action. And one must question at this time whether or not the statute of limitations has [10] expired, such that any new plaintiff could come along and seek to represent those claims which the Epsteins, the Rockfords and others in that case have failed in asserting.

I might add that the plaintiffs in this case, in addition, were sanctioned by Judge Real for failure to provide necessary discovery in connection with class certification. Plaintiff Epstein was found to have testified falsely and under false pretenses in concealing in his deposition testimony that his shares were held in a tax-free account, free of tax consequences. Thus he had no standing to assert the so-called 10b-13 and 14d-10 claims. Judge Real indicated that had he not dismissed the case in its entirety, Mr. Epstein would have been disqualified because of that fact alone.

Mr. Epstein in late '91 filed an action against Lazard Freres in New York State court on a theory of negligence by that financial advisor at MCA. In a lengthy opinion issued in September of 1992 Judge Baer of the New York Supreme Court dismissed this second action by plaintiff Epstein on res judicata grounds.

Thus, the California plaintiffs have had [11] their day in court and their claims have been found to be lacking in substantial merit and dismissed with prejudice. They are on appeal to the Ninth Circuit. In our view, that does not affect the fairness of the settlement proposal we are making today. It is

the adverse adjudication of those claims, based on a legal analysis demonstrating that they lack merit, which demonstrates that the right to get $2 million now rather than be on line to recover whatever may be recovered in those cases is a fair and reasonable proposal, because those cases are lacking in substantial merit and have been dismissed and do not speak for a class.

As before, the parties do seek a global settlement of estate claims and all related federal claims arising from the MCA/Matsushita acquisition. This Court's power to effectuate such a global settlement and release of claims has already been determined to exist in this case and cannot be questioned, as it is supported by wide-ranging authority of the Supreme Court of this State, this Court's own practice and federal courts who have honored state court releases of federal claims otherwise outside the jurisdiction of the state [12] court. As a policy matter Delaware courts have effectuated such global settlements based on the realistic assessment, as your Honor recognized in his prior opinion, that if there is to be any prospect of settlement at all in contested corporate litigation, over which this Court exercises wide and frequent jurisdiction, there must be included the release and termination of any actual or potential claims arising from the same transaction. This is a power routinely exercised in this Court. Your Honor has issued opinions in that area. Other judges of this Court have done the same. And cases involving federal claims which are pending in federal courts, which have been pending in federal appeals courts, have been terminated.

In the Sithe-Energies case your Honor terminated a California Superior Court case that was arising from the same facts and circumstances as the settled Delaware matter.

In the Becore Western case Vice Chancellor Berger terminated an action which was pending in a federal appeals court and raised federal securities claims based on the overall assessment that the global settlement and release of [13] all claims was fair in relation to the consideration supporting the settlement.

The question whether this settlement should be approved, therefore, is based on this Court's independent business judgment as to the benefits of the settlement in relation to the risks and prospects of continued litigation. That analysis embraces both the state and I think the federal claims, although the impact of the federal court's District Court dismissal certainly I think is of weighty impact in the analysis and suggests, as I have indicated before, and reinforces the lack of merit of those federal claims that have now been litigated.

We respectfully submit and will endeavor to show that the $2 million cash fund now being made available through the settlement does in fact represent fair and more than adequate consideration for the global release of all claims.

This Court previously determined, based on a similar record as is now before the Court, that the State law fiduciary duty claims were relatively weak, in its view. We don't interpret that to mean that they don't plead a proper action, but that in [14] light of the evidence before the Court, which was available through preliminary judgment proceedings and depositions of the senior MCA officials, the Court made a determination that under Revlon there was not a viable claim that would be sustained at trial with respect to the market check and efforts to maximize shareholder value in this case. And we, having litigated these cases before your Honor, go in with our eyes open and are satisfied that those claims are highly uncertain of resolution, and if we went to trial we are not optimistic that those Revlon claims would survive.

Nonetheless, they are in the case and they did state a valid claim as a predicate for this action, but they are of insufficient value, I would suggest -- and I think the Court would have to conclude, based on its prior opinion -- to call into question a $2 million settlement.

We also demonstrated before that the Wasserman transaction involving his capital contribution agreement was a pleading matter and was pleaded to implicate Delaware law issues as to whether he was abusing or taking advantage of his insider position. The Court found, based on the [15] evidence

before it, that Mr. Wasserman was free under Delaware law to work out his own arrangement for his shares and that he had not abused his insider position in connection with the transaction.

It is simply the case that although that matter does not have litigable merit, it is still in this case and is the precise factual predicate for the issues being litigated in California, thus reinforcing the propriety of the global release that we seek.

The Delaware issues having been, I think, fully reviewed before, the focus is obviously here more on the federal claims which I have already prefaced. But as a threshold matter I think it's important to state what this Court need do and need not do in assessing those claims.

The objectors have brought all the appellate briefs from California into this proceeding. I think they are either trying to persuade your Honor to function as a shadow appellate court deciding de novo Judge Real's adverse rulings, or trying to persuade your Honor that you shouldn't get into these issues; that they are best left to another forum.

[16] We'll deal with those issues. But there's a fundamental issue here as to why or whether the Court should even get into a detailed assessment of the federal claims, and it need not. And the reason is this: Because class certification has been denied by Judge Real, and that is based on detailed findings as to the inadequacy of these plaintiffs who were held in contempt. That class certification denial is subject to a stringent abuse of discretion standard.

This demonstrates that even if one could entertain the unlikely scenario of a reversal in the Ninth Circuit on the dismissed federal claims -- and I mean on the substantive issues -- something that we think will not happen because of the state of the law and the findings of fact here. But even entertaining that assumption, the likelihood that the Ninth Circuit will interfere with and overturn Judge Real's negative determination on class certification is, I think, completely beyond the realm.

This is based on a full record and Judge Real's direct dealings with those plaintiffs and an abuse of discretion standard that ties the appeals [17] court's hands. The likelihood that Judge Real would reinstate these same plaintiffs on any remand, were it to occur, is, I think, most remote, if one reviews the findings of fact in this case.

With respect to any new champion of these claims coming along, I would submit the U. S. Supreme Court's decision in the Lampf case, establishing a one-year-from discovery rule of statute of limitations for Exchange Act claims. In a case that has now been denied class certification, I suggest, your Honor, that it is much too late in the day to think of new plaintiffs coming forward on behalf of this class.

So the reason I say the Court need not become an expert on federal securities laws is because even if one accepted every assumption of Mr. Smith and the California plaintiffs' attorneys about what a sensational case they have, which we think are without foundation, they could be right on every one of those points and it wouldn't matter because the absent class members cannot benefit from a recovery in California which is pursued and recovered only on an individual basis without any prospect for classwide recovery.

[18] I think it's also significant that a federal judge, based on a full record, has dismissed the claims and that this Court should not simply substitute its judgment for that court, as if it were a Ninth Circuit court justice, but I think should give presumptive effect to Judge Real's elaborate findings of fact and conclusions of law that there is no federal case.

But since the matters have been brought before your Honor, and since we as plaintiffs' attorneys who negotiated this matter continue to monitor the federal proceedings, have studied and analyzed the federal briefs, the appellate briefs and the cases on which they rely, we think the ultimate nail in the coffin here is that Judge Real is right. He is right on the facts and he is right on the law, and much of his ruling was based on stipulated facts.

The Court found, as I indicated, no private right of action under 10b-13. That's very substantially supported by that rule itself, which does not expressly or impliedly, as part of the scheme of which it is a part, in any way suggest the existence of a private right of action.

[19] The Court found that the Wasserman transaction was negotiated and agreed to prior to the tender offer and performed thereafter. He did not integrate and resisted arguments to integrate the Wasserman transaction with the tender offer because as a factual matter they create separate obligations which were separately negotiated, and as a legal matter, as reflected in the relevant case law before him at that time and now reaffirmed by Kahn and Kramer and a whole slew of SEC releases and consistent authority in this area, a private transaction negotiated prior to a tender offer and performed thereafter, which is separate from the tender offer, is not in the tender offer and, therefore, is not subject to the peculiar constraints of the tender offer rules.

Judge Real looked at the Field v. Trump decision, and knew that in the Second Circuit's affirmance in Kramer, a subsequent decision, Field was limited to the ruling as to when you would integrate two successive tender offers and determine whether a first one had been withdrawn and a second one was really part of the same thing, to determine whether private deals in the interim were or were [20] not afoul of the Sithe purchase rule.

But that's all that Field speaks to. It doesn't speak to this situation. This is a privately negotiated separate transaction which the Court has ruled as a factual and legal matter is not subject to the constraints of 10b-13 and 14d-10. There is no case that provides support for the integration of those transactions.

One does not have to definitively determine for purposes of this settlement that the federal claims have no prospect. One does not have to become an expert on federal securities laws. But what the Court is doing is checking our business judgment in settling. And we went through and reviewed the law

and we reviewed the briefs and we looked at the findings of fact. As plaintiffs' attorneys who litigate these cases throughout the country, we have made a professional judgment that we think is supported by the whole record that the risks and uncertainties of that federal claim are so fraught with uncertainty, that those claims are so weak, that the record in that proceeding in California is so horrendous, that the prospect of anything emerging from that case is so remote, that [21] $2 million more than adequately compensates -- much more than adequately compensates for the release of all the federal and state claims here.

I would note that after full disclosure in the notice there have been only two objectors, two who are aligned in interest with Mr. Minton, the California plaintiff, and 18 opt-outs, representing a minuscule proportion of shares, and half of those opt-outs by shares are Mr. Minton himself. So, in effect, the class of 78,000,000 shares and in excess of 20,000 shareholders has embraced this settlement.

Let me turn briefly to the objectors.

Mr. Krupman prepared an affidavit which the discovery proceedings have demonstrated was predicated on a draft document that came to him or his attorney from the Kaufman Malchman firm, which is the counsel for the plaintiffs in Los Angeles. We sought production of that document and were informed by Mr. Allyn, who is in the courtroom today, that the document was thrown out. I'm told by defendants' counsel that we can't obtain it from the Kaufman Malchman firm, a firm that at the outset of this case formed part of the Delaware committee of the whole but splintered off to pursue its own [22] case in California.

Mr. Krupman is simply a surrogate for those California attorneys, and he has said nothing in his papers that in any way contradicts the analysis in our brief, the defendants' brief or what I have said today with respect to the lack of substantial merit of those federal claims and the propriety and policy propriety of effectuating a global release.

The Minton story is somewhat more intriguing. On December 11 Marian Minton, wife of Walter Minton, filed a notice of intent to appear and object to the proposed release of federal claims. On December 31 she filed her brief, and there was no mention of the federal release. She objected on notice grounds, which I will get into in a moment. Her stepdaughter, Pamela Minton de Ruiz, stepped up to the plate to become the objector on substantive issues.

We took their depositions -- both of them. We found out that after Mrs. Minton had made her initial appearance in this case it came to the attention of her side that because she had not tendered into the tender offer but had been a [23] beneficiary of the merger, she had no stance to be a plaintiff in the California action, which was only for the benefit and asserted on behalf of tender offer offerees. So how could she object in this Court to the release of claims that she had no standing to assert in her own right?

The evidence indicates that Mr. Minton then arranged for his daughter's appearance and the notice objection was put in by Mrs. Minton.

I think that sequence alone demonstrates what's going on here. Notice was properly provided. The Simpson Thacher papers are conclusive on that. And any problem that Mrs. Minton has with notice I think is the problem and function of her broker, Dean Witter, who, it is clear on the record, sat on the notice for more than 14 days after it received it from defendants and did nothing to bring the notice to the attention of its clients.

Nonetheless, Mrs. Minton was able to appear with an attorney and object. And by the materials before the Court today it is clear that that Dean Witter class has been given notice as of the end of December, the beginning of January. But those shareholders take the risk as holders in [24] street name of this kind of problem. If it exists, it is not really a problem at all. Because in addition to the mailed notice there was publication notice in this case, and it was put in to deal with this problem precisely.

So there's no issue here about notice. It's a trumped-up charge to provide Mrs. Minton a vehicle to stay in this case when her real basis for being here initially was invalidated by her inability to assert standing to be in the federal class.

Mr. Minton himself has opted out. He's used his family members as his vehicles. Thus he won't be bound by the settlement if his objection is unsuccessful and he'll preserve his claims in California. I suggest that the Court should not lend itself to this orchestration. Those claims and arguments they make do lack merit. They do not demonstrate the validity of the federal claims. They do not demonstrate any problem with the granting of a global release. They are faulty and deficient on their face, and background confirms it.

Ultimately the appeal is made to the [25] Court: "Delay. Don't act. If the Court is inclined to approve the settlement, don't act. Await the result of the Ninth Circuit ruling."

We heard this argument before. We heard this siren song of awaiting the results of the trial, and the Court waited, and 15 months later the plaintiffs were thrown out, sanctioned, and their claims are on appeal. So now they want us to wait again.

I would suggest, your Honor, that there are a number of factors that this Court should weigh and consider in response to that request, and they all incline in favor of deciding the settlement on the basis of the information we have before us, which is that which was in the possession of plaintiffs' counsel when they negotiated the settlement and which I believe will continue to hold true throughout the remainder of this proceeding.

The California plaintiffs made an application -- it is in the application -- to the Ninth Circuit to accelerate the appeal in that court -- the oral argument -- so that it could occur before today's scheduled settlement hearing. The Ninth Circuit rejected that request. If the Court [26] had any concern about its actions affecting the appellate processes of the federal court, I should think that this action by the Ninth Circuit would suggest that the Ninth Circuit has no problem and welcomes this

Court's addressing of the release issues in advance of any disposition on the appeal.

The objectors say, "Allow a delay so that we can see what happens in California and take advantage of it, if it should transpire contrary to what all the facts and circumstances would suggest."

I submit that those who wish to preserve the right to benefit from the theoretical possibility of reversal and the even more remote reinstatement of class claims have been afforded the opportunity to opt out. They have done so if they wished to benefit from such an approach. This Court should not delay its filing and thus preclude the overwhelming majority of shareholders for whom we speak from receiving the settlement benefits at this time, when it appears that they themselves are willing to give up these theoretical federal claims that have been dismissed in exchange for having the money now, whose value will dissipate over time.

They very much minimize the delay. But [27] really we're talking about a very substantial delay. It's not just a few months. If they lose, they have a record. They may further appeal it. Even in the remote situation of a reversal there's going to be a remand.

The point is, the delay here is open-ended and indeterminate. In the meanwhile the settlement process in this Court is held hostage. There is no authority for such an approach.

I would submit that the strong policy in this Court which your Honor has referred to in any number of written opinions that favors settlements and recognizes the wisdom and the necessity of global settlements is in the balance. If there's a precedent by this Court that a dissident group of federal plaintiffs can go off, litigate their own case, lose, and then come back here and attempt to hold the settlement process hostage for an indefinite period of time, I think that this is contrary to the policy of this Court and this State with respect to the effectuation of global settlements, and would be contrary to this Court's wide-ranging jurisdiction in this area.

Your Honor, that concludes my opening [28] comments. We have a fee application. I would prefer to submit it on the papers. I think I would recognize the settlement issues are paramount in today's proceeding.

Unless the Court has any questions of me, either on the settlement or fee, I would like to defer to Mr. Tully, who speaks for the defendants.

THE COURT: Very well.

MR. SCHULMAN: Thank you.

THE COURT: You have already used your half-hour.

MR. SCHULMAN: Your Honor, I apologize. If Mr. Tully may just be given a few minutes.

THE COURT: Very well.

MR. SCHULMAN: Thank you.

MR. TULLY: Your Honor, thank you. I'll try to be brief.

I emphasize again to your Honor the fact that after two notices and a publication notice in the national edition of the Wall Street Journal in November, only 18 class members have chosen to opt out. This creates a very strong presumption that the members of the class want this settlement and they do not want the substantial delay which would [29] come from the long-shot attempts by a few individual plaintiffs to revive their now dismissed federal claims.

This isn't just the defendants' view or the plaintiffs' view here, your Honor. This is the view of the Ninth Circuit in their Marshall decision, which we cited to your Honor in our brief. That court, in affirming the approval of the settlement by the trial court, over objections, said that the unsuccessful objectors "... had the right and opportunity to opt out in this action. They chose not to. We believe that they should not now be allowed to play the role of spoilers for a class of more than 31,000 people when they could have chosen not to be bound by the settlement."

That, of course, is equally true here. Indeed, most of the Mintons have opted out. They can pursue their individual action, as can some of the other plaintiffs who have opted out of this settlement.

The suggestion that your Honor stay the processes of this Court in favor of a final resolution of the proceeding in California we believe has no merit. First of all, it's only [30] individuals who are pursuing appeals in California. There is no class action in California. To deny the class here, the only class that exists, the benefits of this settlement would frustrate the Delaware policy favoring settlement and, indeed, would frustrate Rule 1 of this Court, which directs that all matters, including matters under Rule 23, be resolved in a just, speedy and inexpensive manner.

Instead, the objectors here advocate that your Honor monitor the process in an ongoing appeal in the Ninth Circuit, presumably then evaluate whatever subsequent opinions that come down, and hold further proceedings here on the meanings of such rulings or decisions. Such a process makes no sense and is unnecessary, given the abundant notice of those claims here and the right to opt out, which some shareholders have chosen to take and others have declined in favor of the benefits of this settlement.

Let me make one final point. Objector Minton in her brief takes defendants to task for having failed "to negotiate with the attorneys for the federal class actions." She also says, "It's those plaintiffs who can best represent the class [31] with respect to the federal claim."

Your Honor, there are no federal class actions. Class action status, as Mr. Schulman pointed out, was twice denied, although this fact nowhere appears in the objectors' briefs to your Honor.

The prospect of any success in attempting to reverse that discretionary denial of class certification is virtually nil, a fact which is conceded de facto by the plaintiffs in California in their appellate briefs, where they devote only a couple

paragraphs to the class certification issue out of hundreds of pages of briefing.

Secondly, there is a class action, and it is before this Court in this proceeding. We negotiated with class counsel, the only class counsel there is. It is for this Court and for the class representatives to evaluate the merits of all claims to be settled in a global settlement. The Ninth Circuit decision which I read to your Honor squarely supports that view.

Indeed, why would we, as defendants, negotiate a settlement with attorneys who do not represent a class, who have been held in contempt by [32] the California federal court, and who believe, contrary to reason and the findings of fact and conclusions of law of the chief judge in California, that their claims are meritorious and worth astronomical amounts in damages?

We believe that the State claims and the federal claims are weak. Indeed, the federal claims stand on even a weaker jurisprudential footing than the State law claims that your Honor evaluated preliminarily on the last settlement. After all, the federal claims were re-evaluated after full discovery, twenty depositions, vigorously stipulated facts submitted by both sides. They were definitively addressed in detail.

But even if there's a million-to-one shot on appeal in California, that shot is protected by the opt-out right which is part and parcel of this settlement. Anyone who has a different view than Judge Real, than class counsel or than the defendants on the merits of those now dismissed claims can take that gamble by opting out. Eighteen people have chosen to do so. The other thousands of shareholders have chosen the settlement consideration and should be granted it without [33] further delay.

Thank you, your Honor.

MR. SMITH: May it please the Court: My name is Craig Smith. I'm the attorney for objector Marian Minton as custodian for Catherine Minton, a minor, and also attorney for Pamela Minton de Ruiz. Although Mrs. Minton is Mrs. Ruiz'

stepmother, they are differently situated and they object to the proposed settlement for different reasons. I will treat them separately.

I will attempt to be brief. Today, your Honor, I'm not going to mince very many words.

In the first instance, the Court has before it a settlement proposal, and the Court must exercise its own business judgment as to the bona fides of that settlement.

I'm a little puzzled. These are the papers that the defendants have filed (holding up papers). It is about two inches thick. We've got about three inches from the plaintiffs in support of this settlement.

This is what the settlement is worth, your Honor: two cents. And that's all. $2 million divided by 78,000,000 shares, the approximate number [34] of shares outstanding, is two and a half cents a share. Deduct the fees and expenses that the plaintiffs' counsel want, and you get a net of a million three. Divide that by 78,000,000, and you are down to 1.6 cents per share.

Chancellor Allen in a case we submitted to the Court earlier today, in response to the papers filed by the proponents of the settlement in Stepak v. Tracinda Corp., found that 12 to 13 cents per share in a settlement -- that was the gross amount -- when reduced by plaintiffs' fees and counsel's fee, of 5 cents net to shareholders, did not even represent or barely represented nuisance value of the claims. The Court said in that case that the terms of that settlement were a concession that both sides saw the litigation as without merit.

I would submit in the first instance, your Honor, that just the nuisance value alone of these State law claims and the federal claims is greater than two cents per share. The settlement is inadequate even as a settlement of nuisance value.

What is being given up? Worthless State law claims and federal claims that are still in the process of being litigated, and vigorously [35] litigated, in California. The value of those

federal claims is estimated to be 10 to $20 per share. And if we take this 1.6 cents per share settlement, looking just at our federal claims, if you take the high end, $20 a share, they are being settled for 8/100 of one percent of their value. If you say, "That's too much. Let's take it at $10 a share," the claims are being settled for 16/100 of one percent of their value. If you go all the way down to a dollar a share as the real value of those federal claims, they are being settled for 1.6 percent of the claim. That is a minuscule amount.

If you simply look at what one might call a cost benefit analysis in a very rudimentary sense, the California litigation is on appeal. It's fully briefed. There's no incremental cost in going forward except the minimal cost of oral argument before the Ninth Circuit. We have these federal claims that may be worth up to 420 a share, and we have a choice. We can take a chance on what the Ninth Circuit will do, or we can settle them for 8/100 of one percent of their value, or maybe one percent of their value. But it is a de minimis amount.

[36] If you weigh what is being given up, that opportunity for material and substantial recovery, against two cents per share, I don't think it's a very difficult analysis to see that the risk of losing two cents a share, an amount not even equaling the nuisance value of the claims, is a risk worth taking.

Sound business judgment often entails taking risks. I admit two cents a share is worth more than nothing per share. But I submit it is so negligible in value that to risk its loss against the potential for the far higher return of the California litigation and the federal claims being litigated out there would be the exercise of sound business judgment. Frankly, these two pennies per share are too little here to make the settlement worth the sacrifice of those claims.

Let me comment for a moment on the theory that there is no class. Class certification was denied. It has been appealed. It can be reversed on appeal. There are still class members. The notion that somehow, because the class certification has been denied, the statute of limitations has run is erroneous. I cite to [37] Edwards v. Boeing Vertol Co., 717 F.2d 761, a

1983 decision by the Third Circuit Court of Appeals, which held that where class certification is denied but that denial is appealed, the statute of limitations is tolled until there is a final determination on the issue of class certification. That doesn't happen until the appeals are exhausted. I would specifically refer the Court to pages 765 and 766 of that decision for the discussion of the Third Circuit.

So the reality is, if the Ninth Circuit reverses, there is still a class in California. There are still people out there who could assert those federal claims. I think that's important because I think in part that is the explanation of why this settlement from the defendants' point of view is being pressed so hard.

The proposed settlement -- strike that.

Let me go back and just remind the Court of a little bit of the procedural history here. I will be briefer than Mr. Schulman.

The Delaware actions were filed and then the California actions were filed, and then there was a settlement struck between the defendants and [38] the plaintiff class in this action, and then the Delaware complaint here was amended to include the factual predicate for the federal litigation, and then they sought this Court's approval of their proposed settlement. So, in short, once they found out there were federal claims, they quickly amended the complaint here in an effort to get their settlement through. I think that says a lot.

The proposed settlement is worth slightly less than two cents per share. The plaintiffs' counsel expect to receive over half a million dollars in fees, plus they have asked for some $116,000 of reimbursement for costs for their efforts in settling extremely weak State law claims and releasing federal law claims in which they have no interest. They don't want to prosecute them, they didn't press them, and they certainly couldn't prosecute them in this Court, given the federal court's exclusive jurisdiction.

For $2 million the defendants purchased an insurance policy, in effect, shielding them against potential liability that

could range from $780 million to perhaps as high as a billion and one-half. And they get to avoid dealing with the [39] counsel and the plaintiffs who are most interested in those claims, who have an interest in pressing those claims as a class action in federal court, who have litigated and continue to litigate vigorously those claims.

I think this two-cent settlement is collusive. The facts of their case are a paradigm of the kind of collusion that this Court I believe as a matter of public policy -- indeed, as a matter of public trust -- should not sanction. Approval of settlements of this kind serve only to undermine public confidence in our legal system. And this Court understands that.

I don't think anyone here today fails to grasp the true nature of this two-cent settlement. I quote from Professor Coffee's article, which was reproduced as an exhibit to the papers filed by Mrs. de Ruiz in objection:

"Today, there may be a third form of collusion appearing on the horizon. Under it, the parties to one action (in state court) negotiate a non-merits based settlement in which at least one of defendants' primary goals is to preclude plaintiffs in a different case (in federal court). In short, [40] one group of plaintiff attorneys effectively sell the legal claims raised by another group in order to enhance their own settlement at the expense of the absent group.

That, your Honor, I submit is what is happening here. A year ago this Court held that the State law claims sought to be litigated by the plaintiffs here were substantially without merit, and the federal claims were the only claims that appeared to have substantive merit.

I think what that means is, the plaintiffs here don't have anything to sell to the defendants by way of settlement except the federal claims. And those claims aren't raised here. They are raised in California. They are being sought to be settled here by way of a release to enhance the settlement here and at the expense of the California litigants, who would include Mrs. de Ruiz.

The defendants, too, benefit. They don't have to deal with the California attorneys. They are the ones who have been willing to expend the time and the effort and the money, first at the trial level and now on appeal, to enforce what they believe to be the class rights in connection with [41] these federal claims.

It's no wonder the defendants would rather deal with the plaintiffs here. One need only compare the docket, which has over 500 entries in California, to the docket here. What's been done here: They filed a complaint, an amended complaint. They have taken three depositions over the course of two days. They have had one document production request. And that's pretty much it, other than settlement. By comparison, in California they were almost on the eve of trial or certainly approaching trial in California when the Court ruled on the summary judgment motion.

The federal claims have material value. I think the defendants' and the plaintiffs' own papers amply demonstrate that fact. The defendants say the federal claims have no merit. There can be no class action to pursue those claims because the statute of limitations has run. Why do they want to settle them here? Why do they want a release? If they are correct, if they believe that, they wouldn't need a release.

They say the only people who can pursue the federal claims are the individual named [42] plaintiffs in the California action, and I suppose those who have opted out. All others are barred because of the statute of limitations. At least that's their argument, as I read it.

We know that argument is wrong. The Third Circuit tells us that the statute of limitations continues to be tolled until there's a final adjudication. So if there is a reversal, there is a possibility that there will be a class action in California.

Why do they need a release of the federal claims? They have no faith in their position. I can only surmise that they are afraid that Judge Real will be reversed. He does have the

highest reversal rate, apparently, of any District Court judge sitting in California.

I think they fear the prospect of having to litigate the California action on its merits, so they want a release. They certainly are not afraid of the State law claims, because this Court has already told them that they have little or nothing to fear with respect to those claims.

We aren't suggesting that this Court second-guess the federal District Court in [43] California or attempt to predict what the Ninth Circuit will do, and it was not for that reason that we submitted the appeal briefs filed in California. We submitted those really for only two reasons: to show that the plaintiffs in the California actions were seriously litigating material federal claims and that briefing before the Ninth Circuit was complete.

This Court should not ignore the posture of the federal litigation. It has gone forward. The defendants admit that there was substantial discovery in that action, and I think the appellate briefs show that the plaintiffs there are pressing hard on their claims. And I think if your Honor reads those briefs, not for the purpose of second-guessing either the District Court or predicting what the Ninth Circuit will do, but reads those briefs with a view to assessing whether there are meritorious claims still alive in California, I think you will reach the conclusion that those claims are meritorious and they are worth more than two cents a share.

Several years ago Chancellor Allen faced a similar problem in Stepak v. Tracinda Corp. There [44] the Chancellor was faced with a proposed settlement that offered 12 to 13 cents per share, five cents after attorneys' fees and expenses were deducted. And that proposed settlement, if approved, would have settled claims being litigated in the California State courts. Chancellor Allen had this to day, and I quote:

"... it is not necessary to engage in a subtle or detailed analysis of the expected value of such claims as the class may possess in order to conclude that this proposal is not worthy

of serious consideration. Only were the Court able to conclude that those claims have only nuisance value could the proposed settlement conceivably be approved."

That's at pages 13 and 14 of his opinion.

The Chancellor further concluded that the five cents per share settlement value represented, and I quote, "... an implicit agreement by the parties negotiating it that the case was totally without merit." That appears at page 12.

The Chancellor went on and said something else that I think is very significant. He said, "Rule 23(e) mandates substantive court review, [45] in part at least, because the class action form of action does make possible opportunistic behavior at the expense of absent class members. Where there are two or more attorneys purporting to act on behalf of the same or overlapping classes, there is a special risk that a defendant will seek advantage in choosing the adversary with whom it will negotiate, and a risk that the blessed plaintiff will be accommodating in exchange for an agreement that includes legal fees." Page 15 of the Chancellor's opinion.

And finally, one more passage from that case, and I quote: "While I would not say without a more thorough investigation that such conduct" -- referring to possible sell-out of a class -- "has in fact occurred here, I note that the history of the prosecution of these matters seems consistent with that possibility. In all events, candor does impel me to say that the proposed settlement, alone among the many such applications I have been required to review, engenders disdain that is pronounced and lingers. It is frankly unimaginable that I could exercise my judgment to approve it as fair to the class. Moreover, approval of such a proposal would, [46] in my opinion, threaten to hold the class action mechanism up to justifiable scorn and to charges, too frequently made without adequate grounds, that the stockholder class action mechanism represents nothing so much as a device for lawyers to enrich themselves while serving no practical interest of those for whom they are charged to act." That appears at page 16.

For that reason the Chancellor stayed the Delaware litigation so that the more actively litigated California case could proceed, and he refused to even schedule a hearing on the proposed settlement.

I think, your Honor, all of those principles are applicable here. I have already reviewed the brief history of the litigation here, and it is indeed brief: three depositions and some documents, and a settlement, and a settlement that was conjured up to take into account federal claims, when those claims arose way back at the inception with the filing of at least two class actions or more in California.

So there is little doubt that the California federal actions have proceeded on the [47] merits. Here there's been a little bit of discovery, but plaintiffs mostly have sought to settle. The value of the settlement proposed today: two cents per share. It is negligible. The State claims here have little value, if any.

If anything of value remains, it is the federal claims. Somebody is afraid of those claims or they wouldn't seek to release them. I think that the purpose of this two-cent settlement is to provide defendants with a way to have the valuable claims in California released as a part of settling extremely weak State law claims here.

I think these facts are remarkably close to those that faced Chancellor Allen in the Tracinda case. I think they call for a similar result.

Let me turn very briefly to Marian Minton.

THE COURT: Are you going to share your time with someone else?

MR. SMITH: I am going to share my time with Mr. Allyn. If I may have just one minute for Marian Minton.

I think there, your Honor, that we have submitted papers and some additional papers this [48] morning which show that

there are at least some 600 beneficial holders who never received notice in time to even appear and make an objection.

I don't really want to find fault with anybody, either Dean Witter or with the defendants in this case, but I think it shows perhaps a system that didn't work very well over a period of time when, given the holidays and the short period of time for the notice in relative terms, there are a fair number of beneficial holders who have never received notice. That may be one explanation why there are so few people here today.

Your Honor, we filed this morning on behalf of another objector and, as a courtesy to Mr. Allyn, a motion for his admission pro hac vice. I don't know if your Honor has received that motion or not. If not, I have a copy of it that I could hand up. If the Court will permit, I would introduce Mr. Allyn at this time and move his admission.

THE COURT: Yes, it's here. I've signed it.

MR. SMITH: Thank you very much, your Honor.

[49] MR. ALLYN: May it please the Court: My name is James Allyn. I represent the objector, William Krupman.

Vice Chancellor, this settlement is not fair and it should not be approved. In explaining why, I will first describe how Mr. Krupman and I came to be here today, since you have heard allegations that he and I are pawns or straw men of the Kaufman Malchman firm.

I am a solo general practitioner in New York City. It is an honor for me to be here in this courtroom with these distinguished lawyers today. I am not an expert in securities litigation. Does that buttress their claim that he and I are pawns of Kaufman Malchman? No. In fact, it rebuts that claim, as I will explain.

Mr. Krupman is my father-in-law. We have an excellent relationship. That also means that my expected reimbursement for fees and expenses in this matter is about $691,000 less than what the plaintiffs' attorneys seek.

How did Mr. Krupman come to be an objector here? In November he asked me to review a proposed settlement that was submitted to him. [50] At the end of November at a family dinner he asked me what I thought about it. I did some calculations and came up with the number that he was being offered $2 a share. Fortunately, another relative who is an accountant was there, and he came up with the correct figure of two cents a share. I told him that the attorneys were going to submit an application to get $600,000 in fees.

Mr. Krupman was extremely upset. He believes that MCA was worth more than it was sold for. The deal happened at the price due to an extremely generous compensation package which was received by the directors. He felt the tender offer was inadequate and now he was being presented with a settlement that was inadequate. He asked me to find out how to register his displeasure.

A few days later he gave me the name of a gentleman named Ernest Kaufman in Los Angeles, and asked me to call him for information. I called Mr. Kaufman at the beginning of December. I left a message that I wanted to talk about the MCA case. He never called me back.

Being busy with other matters such as making a living, I did not call Mr. Kaufman again, [51] which is a demonstration of inertia that occurs even among those who wish to object to a settlement.

In mid-December a friend called me up. He asked me to initiate a class action against National Health Laboratories, whose stock had plummeted after they pled guilty to defrauding the government. I explained to my friend that I was not qualified to handle such litigation, given the size of my practice and the level of my experience. I requested that that person send me a copy of the complaint in the matter.

Returning to my office after Christmas, on my desk was a letter from Mr. Jeffrey Squire of the Kaufman Malchman firm. It turned out that his firm had handled the National Health Laboratories matter. He enclosed a copy of the

complaint, along with a cover letter stating that I should feel free to call him if I had any questions about the complaint or if I wanted to discuss securities litigation in general.

I called and left a message for him to thank him for sending me the materials. I also noticed that he was from the Kaufman Malchman firm, the same firm as Ernest Kaufman in Los Angeles.

[52] Mr. Squire was on vacation. However, I left a message. He returned my call nonetheless. I thanked him. I then asked him if he knew anything about MCA. I told him that Mr. Krupman was very displeased and if there was anything he could do, I asked him for ideas and advice on how to contest the settlement. We discussed the case, and Mr. Squire offered to provide materials to use in drawing up an objection. He sent me the Exhibits B through K, which are mainly the federal appeals briefs, which are attached to Mr. Krupman's affidavit, plus a draft objection.

I reviewed these and then called Peter Linden at the Kaufman firm to further discuss them. I edited the draft, typed it into my computer. I then discarded the draft that Kaufman Malchman had provided to me. I printed my own draft, and went through this process a number of times, revising my drafts each time. I do not have a copy of what Kaufman Malchman gave me. I have since stated that in a document request which was made to Mr. Krupman. I asked Kaufman Malchman to provide me with a copy, but they are unable to do so.

I then showed the draft affidavit to [53] Mr. Krupman. I discussed the case with him. He revised the affidavit. I made those changes, and we submitted the affidavit.

The settlement proponents now say that we are a pawn of Kaufman Malchman. That is very ironic to me. We serendipitously came into contact with them after Mr. Kaufman in Los Angeles did not return my initial phone call.

On the one hand the proponents of the settlement point to the paucity of objectors as evidence that the class approves of

the settlement. But look at the hurdles the objectors must overcome.

First, you have to read the imposing settlement.

Second, you must calculate what the settlement will give. Nowhere in the document does it explicitly say outright that each share will get two cents.

Third, you must notice that $600,000 comes out of the pot, plus expenses which are not enumerated in the proposed settlement and turn out to be over 100,000.

Fifth, unless you have a son-in-law who will represent you for free, you must hire an [54] attorney to object, at a cost of several thousand dollars. If you do have a son-in-law, he can represent you for free, but if he obtains help in creating your objection from a party with obvious motives for opposing the settlement -- but who else but such a party would offer assistance -- your objection will be dismissed by proponents of the settlement as not your own.

Is it really surprising there are not more objectors here today?

Mr. Krupman is objecting of his own volition. I needed help in presenting that objection to this Court. Kaufman Malchman did, indeed, provide me with that help. However, that does not change the fact that this is Mr. Krupman's objection.

Why does he object? This settlement is not fair. The plaintiffs cite the monetary reward to the class, but that's only two cents a share. If this was only the Delaware action, two cents a share would be fine, probably generous, since this Court found those claims probably meritless. In that case a fair settlement would really be nothing for the class. Mr. Krupman would be annoyed, but so be it. [55] The defendants successfully structured the transaction so that no laws were violated.

However, here the class is also giving up a potentially lucrative federal action. Granted, that action was dismissed by

the lower court. However, the appeal raises a number of issues that were not cut and dried. If the lower court is reversed and the class certified, obviously the class members will have great leverage to extract a much more beneficial settlement.

Of course, if the decision is upheld on appeal, that leverage virtually evaporates. But in that case the class would not be deserving of money anyway, since again it had no valid claims. Settling this case before the federal claims are decided gives the shareholders virtually nothing.

Mr. Krupman is willing to wait to receive his very small settlement check until the federal actions are decided. If the dismissal and denial of class certification are upheld and the defendants then refuse to pay anything to the shareholders, so be it. They had their day in court and it was determined that their claims were meritless. What do they give up in that case? [56] Two cents a share. But if the lower court is reversed and the class certified, the shareholders will be in a position to obtain a substantially better settlement.

It is extremely unfair to give up such a potentially lucrative settlement for next to nothing, and Mr. Krupman strongly objects to the proposed settlement.

Thank you.

MR. SCHULMAN: Your Honor, may I briefly be heard?

THE COURT: Very well.

MR. SCHULMAN: Thank you.

Your Honor, the Delaware Chancery Court in 1935 wrote in the Karasik case, "... the amount claimed is one hundred million dollars and the amount received in settlement is a minimum of three hundred and eighty-five thousand dollars. Now that is a wide disparity. But it is one thing to assert a claim and another thing to prove the claim to judgment. Furthermore, it is one thing to obtain a judgment, and quite another thing to collect it. Figures, however imposing, should not compel practical considerations to yield place to visions."

[57] This Court is understanding of that logic. It has applied it itself in other cases. All courts confront this issue.

We have here a $2 million settlement. It doesn't matter how many shares are outstanding. One can divide it as many times as they want. If we had a $10 million settlement they would say it is seven cents a share. If we had a $20 million settlement they would say it is 30 cents a share. Where does it stop?

That's not the way this Court evaluates settlements. The Court looks at what's being made available to the class through the settlement and it makes a probabilistic assessment of what is coming to the class potentially through the litigation. It doesn't adjudicate claims, and it looks and makes this analysis through the optic of favoring settlements and recognizing that this allows people to get on with their affairs, to allow the courts to move on with their affairs, and to put litigation and weak claims to rest or to allow claims to be released in present money instead of burdening the courts with continued litigation where there's no real prospect of success.

[58] I have heard a lot here about this division, this arithmetic. I heard in nothing of what Mr. Smith or Mr. Allyn said about the points that I made and about the findings of Judge Real with respect to the federal securities claims. There is no answer to the analysis and the rejection on private right of action. There is no analysis on the tender offer, period. There is no analysis in the record of this case on Judge Real's finding that Mr. Wasserman, when all was said and done, received stock that was not worth more than the $66 per share that the shareholders received presently in cash. All we have heard is rhetoric.

If these objectors had come to this Court two years ago and made those arguments, I might understand it. But to make those arguments now, with the history of this case and the amount of time and effort that's gone into it, without fruit, is to me absurd.

They had a burden to explain to your Honor why those claims are going to succeed on appeal, what are the realistic prospects to success, to grapple with the issues as we have attempted to. All I hear is the clink of money on a podium in this [59] courtroom: a jury trick; not an argument. Not appropriate for this courtroom.

The last time Mr. Smith came to this Court and he said, "Your Honor, there's only one problem with this settlement." Remember, that was the poison pill settlement. "There's one problem. There is no opt-out." That's all he argued. Andrew and David Minton, members of the Minton family.

Now we have cash. Now we have an opt-out. And now I hear after two years of litigation that that's not enough; that these claims which have been a burden on the California court system, that have cost enormous time and effort for the litigation of frivolous claims, we should forget all this, forget the opt-out, which Mr. Smith doesn't even mention in his speech today, and we should just let the California lawyers continue to churn the litigation process until the defendants maybe give up or the courts finally, fully, someday get rid of them without any further possibility of appeal.

This is the kind of case, your Honor, I would submit, that settlements are all about. This is a case where all the cards are on the table [60] and there's a ruling by the Court in California. The dealer has put up his cards. We have that information. $2 million, no matter how many times you divide it by the number of shares, is in all likelihood much more than these individuals are ever going to generate through their burdensome California action.

But if anybody disagrees with what I say, if anyone disagrees with class counsel, they have the right to opt out. Mr. Minton has opted out. He's litigated those claims fast and furiously for two years and I assume, based on what I read, he's going to continue to litigate those claims. If Mr. Krupman wants to litigate those claims, I assume, based on what Mr. Smith says here this morning, that he would be welcomed into

the California fold if they need another plaintiff in light of the statute of limitations.

The reality is, your Honor, that those claims have failed. They have been a manipulation. They have been moving through the court system and they have lost on every substantive issue. They have been denied class certification. They have testified under false pretenses to the Court in [61] California. They have been rejected as class plaintiffs, and they now have the temerity to come to this Court without any substantive analysis and say, "Give us an unlimited option until the California cases are resolved."

I don't have to speculate on what that result is going to be. We know today what a fair settlement it is. It's $2 million to release State law and federal claims that do not have the value or greater value than $2 million. I make that statement on the following basis:

There's no predicate for this $10 to $20 damages figure that you were given. It is a pie-in-the-sky number. You don't get there until you prove liability, until you get a class, until you prove that Mr. Wasserman got a better deal, until they get another plaintiff who can march in and meet the statute of limitations. You don't get there. It is not reality. $2 million, by any stretch on the record of this proceeding today, is a fair settlement.

I hear now the specter of collusion. Mr. Smith on the very day that he made his initial appearance in this case for Marian Minton -- not [62] Pamela Minton -- served discovery requests on all the defendants and the class counsel in this case. Why did he do that? Because he was seeking Barkan/Amsted discovery into the good faith of the plaintiffs' attorneys in the litigation of this matter.

I arranged a roomful of documents for Mr. Smith to review, a roomful of Delaware and California pleadings and analyses, all of my compilations. And the defendants did the same. David Bershad, a senior partner of my firm, who is the principal negotiator, had readied himself to be deposed by Mr.

Smith without any prior notification or even an explanation. The attorney from the Smith firm never arrived at any of our offices to review the documents. The deposition was canceled. Presumably they concluded that had we been allowed to create a record in accordance with Barkan and Amsted, this specter of collusion would have been dissipated. So they preferred the naked record, Professor Coffee's article written in 1991, and a lot of speechifying in court.

I think the significant thing is that when Mrs. Ruiz was asked in her testimony just [63] last week, "Do you have reason to believe that Mr. Schulman, in agreeing to this settlement on behalf of the class and proposing to the Court for its consideration -- do you have any reason to believe that Mr. Schulman is acting other than in good faith," the answer was, "No."

This is Mr. Smith's client, and he now comes to court in the face of that admission and accuses us of collusion.

Your Honor, I was very troubled about this case in 1991 when I appeared and argued vigorously and energetically before you in favor of the first settlement. I'm even more troubled now. I see a case in California that is dragging on, that has no real prospect for success, and I see a court in Delaware that I honor and respect, that gives jurisdiction and control of corporate litigation, that is a marvel throughout this country. And a key component of this process is that this Court will adjudicate the claims and it will settle them. It does so in an expeditious and a professional manner. And sophisticated practitioners in this area know that when a transaction is concluded and the litigation has received the proper hearing and the [64] parties are ready to settle and the Court can review it and determine whether the settlement is fair, the settlement must incorporate a global release of State and federal claims. Both state and federal courts have recognized that.

They are now seeking to hold that process up by siphoning and slivering themselves off into a California case, which they tell us -- promise us has merit but has consistently been rejected.

It is my appeal to this Court that it not go for these assertions by Mr. Smith which are unsubstantiated. He is simply attempting to hold up a settlement of this case which, on the objective evidence before it, is fair. And it is fair, I respectfully submit, your Honor, that it should be approved without any further delay. To do otherwise is to sacrifice the policy of settlement in this State.

Thank you very much, your Honor.

MR. RENAULD: May it please the Court: My name is David Renauld of Richards, Layton & Finger.

I'd like to introduce Mr. Paul Curnin of [65] Simpson Thacher in New York. We filed the papers for his admission pro hac vice this morning with the appropriate fee. With the Court's permission, he would like to make a couple comments.

MR. CURNIN: If I might only speak for a minute to the papers that Mr. Smith served about an hour before this hearing in connection with the notice and objection of Marian Minton.

We were served about 11:00 o'clock this morning some letters from Dean Witter that are characterized as affidavits, but they are not. They are merely letters written by someone who is not claiming to have any personal knowledge of this action. They apparently were obtained by subpoena a few days ago without notice to any of the parties in this action. Mr. Smith told us this morning he didn't have time to give us notice.

I think those materials should all be stricken from the record. There's nothing in those materials from the individual at Dean Witter who was personally involved in this case in either a letter or an affidavit, and there's no reason given for that omission.

Further, there's nothing in the letters [66] that Mr. Smith has filed that contradicts in any way the sworn affidavit filed by Alex Fan in this case, who was an individual with personal

knowledge and involvement in the mailing of the notice. His sworn affidavit is the only competent evidence before this Court on the issue of notice.

The undisputed facts regarding notice are simply as follows. None of them are disputed by Dean Witter. Dean Witter received the notice of pendency on November 27. That's the Exhibit C to Marian Minton's memorandum, a letter from Richard Dole of Dean Witter.

Pursuant to that same notice, Dean Witter had 14 days to contact Simpson Thacher if it wished more copies of the notice of pendency. Dean Witter failed to do so. In fact, by their own admission in the letters that Mr. Smith has submitted this morning, they didn't call Simpson Thacher for the first time until December 15. That's Dean Witter's negligence.

As stated in the Fan affidavit, the only competent evidence before your Honor on that point this morning, Mr. Fan and Shannon Strickland of Dean Witter exchanged two or three phone calls. [67] Those phone calls consisted of messages from Ms. Strickland asking Mr. Fan to return the call. Each time he failed promptly to do so. None of those messages were themselves requests for copies of the notice.

On December 23 Dean Witter sent by regular mail a list of shareholders to Simpson Thacher. They sent them regular mail. But notwithstanding the fact December 23 is the day before Christmas Eve, that cover letter of December 23 does not arrive at Simpson Thacher until December 28. Enclosed is a list of Dean Witter shareholders purportedly customers or stockholders of MCA.

Mr. Fan immediately calls Shannon Strickland and tells her that, "In light of the fact that you have given us a list of shareholders' names rather than mailing labels, it would probably be more expeditious for us to send you the 750 copies and have you mail them directly yourselves."

Ms. Strickland agreed, and Mr. Fan sent those notices out, 750 copies, by Federal Express that same day. Dean Witter

got them the next day. Then Dean Witter waited another eight days to bother [68] to mail those notices.

Mr. Smith said he's not interested in finding fault in the notice process. Small wonder, because the only fault here is Dean Witter's. The case law of this Court makes clear that a shareholder who elects the convenience of holding stock in street name bears all attendant risks. Mr. Smith's vague complaints about the way the system works notwithstanding, that's the law.

Add to this the fact that notice was published in the Wall Street Journal on November 18. The Fan affidavit stands uncontradicted by any competent evidence. There's absolutely no question that the notice was given in accordance with this Court's order of October 27.

Thank you.

MR. SMITH: Your Honor, may I just reply in about thirty seconds to two points?

THE COURT: If they are new, yes.

MR. SMITH: I would like to simply refer to the opt-out. I just would remind the Court that the opt-out feature is, by and large, illusory in light of the fact that it is well recognized that most people will not bother to opt out, and that [69] opt-out feature would destroy the class in California. Few people would bother to opt out.

Second, Mr. Schulman took us to task for the lack of substantive analysis in our briefs. I suggest that that's a little misplaced. I think if the Court bothers to read the briefs filed in the California federal litigation with the Ninth Circuit, this is where there is substantive analysis. To the extent the Court is concerned with substantive analysis, I saw little reason for simply rehashing in our objecting papers what is already very clearly stated in those briefs.

Finally, we did file an affidavit this morning by Kathleen Miller that had attached to it some exhibits. I simply wanted

to inform the Court that there was -- in our rush to get them out, what was identified as Exhibit A is really Exhibit B, and what was identified as Exhibit B is really Exhibit A. I apologize for that inconvenience.

Also, that Exhibit C to that affidavit is some excerpts from the deposition of Pamela de Ruiz. Those are submitted to the Court. I haven't said much about them, but I think if the Court troubles to read those you will see that [70] Mrs. de Ruiz is objecting in her own right, unlike the -- strike that.

Thank you, your Honor.

THE COURT: I'll reserve decision and advise counsel.

Stand in recess.

(Hearing concluded at 1:28 p.m.)

- - -

[Certificate of authentication by Reporter omitted]

08/18/93 REGISTER IN CHANCERY PAGE 1

CASE NO. 11740 CASE FILE LISTING

* * *

SHORT PLAINTIFF CAPTION

IN RE MCA INC. SHAREHOLDERS LITIGATION

LONG PLAINTIFF CAPTION

SEYMOUR LAZAR, A.J. LOU, MARION LORD, SHELDON SHORE AND HARRY OSGOOD.

LONG DEFENDANT CAPTION

MCA INC., LEW R. WASSERMAN, THOMAS V. JONES, ROBERT S. STRAUSS, THOMAS WERTHEIMER, HOWARD H. BAKER, JR., THOMAS P. POLLOCK, FELIX G. ROHATYN, SIDNEY JAY SHEINBERG, HOWARD F. ALLEN, MARY GARDINER JONES, AND CHARLES S. PAUL.

DOCKET ENTRIES

1	09/26/90	COMPLAINT FOR BREACH OF FIDUCIARY DUTIES, JOSEPH ROSENTHAL ATTY. FOR PLTS.
1	09/26/90 72	REACTIVATE DOCKET ENTRIES #1 THROUGH #103 INCLUSIVE
2	09/26/90	MOTION & ORDER FOR SPECIAL PROCESS SERVER SIGNED BY V.C. BER DTD.09-26-90 - FILED

DOCKET ENTRIES

3	09/27/90	ISSUED SUMMONS TO SPEC.PROC.SERVER 1 COPY SHR. RET: SERVED MCA INC. BY LEAVING COPIES WITH ELLEN KINSLER OF CORP TRUST CO. ON 09/27/90
4	09/27/90	ISSUED 3114 SUMMONS TO SPEC.PROC.SERVER 11 COPIES SHR.RET: SERVED ALL INDIVIDUALS BY LEAVING COPIES WITH ELLEN KINSLER OF CORP. TRUST CO. ON 09-27-90
5	09/27/90	PLTS. FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM ALL DEF
6	09/28/90	LTR. TO MASTER KIGER FROM JOSEPH ROSENTHAL DTD.09-28-90 - FI
7	10/01/90	REGISTER'S CERTIFICATE - FILED
8	10/03/90 22	ORDER OF CONSOLIDATION SIGNED BY CH.ALLEN DTD.10-02-90, FOR ALL PURPOSES, ALL PAPERS TO BE FILED IN C.A.11740 - FILED
9	11/07/90	LTR. TO CH.ALLEN FROM JOSEPH ROSENTHAL DTD.11-06-90 - FILED
10	11/08/90	SUPPLEMENTAL ORDER TO ORDER ON CONSOLIDATED SIGNED BY CH. ALLEN DTD.11-08-90 (ELFRIEDE GLANCY, JACOB GOTTLIEB & C. CHRISTOPHER MUTH TRUSTEE FOR THE CARL H. MUTH TRUST ARE HEREBY ADDED AS PARTIES PLT.) - FILED

DOCKET ENTRIES

11	11/16/90	ANSWER (MARTIN P. TULLY ATTY. FOR DEFS. MCA INC., LEW R. WASSERMAN, ET AL) - FILED
12	11/27/90	LTR. TO V.C. HARTNETT FROM JOSEPH ROSENTHAL DTD.11-27-90 - FILED
13	11/29/90	LTR. TO COUNSEL FROM V.C. HARTNETT DTD.11-27-90, RE: HEARING SCHEDULED 12-20-90, AT 11:00 A.M. IN DOVER, IF I DECIDE IT SHOULD BE HEARD AFTER RECEIVING THE PAPERS - FILED
14	11/30/90	LTR. TO V.C. HARTNETT FROM JOSEPH ROSENTHAL DTD.11-30-90 -- FILED
15	11/30/90	ISSUED SUBPOENA DUCES TECUM 1 COPY RET: SERVED PARAMOUNT COMMUNICATIONS, INC. BY LEAVING COPIES WITH LORI DENKENBERGER OF PRENTICE-HALL CORP. ON 11-30-90.
16	11/30/90	NOTICE OF DEPOSITION - FILED
17	12/05/90	LTR. TO JOSEPH ROSENTHAL FROM V.C.HARTNETT DTD.11-30-90, RE: YOU HAVE NOT SHOWN, OR EVEN ATTEMPTED TO SHOW, THE GOOD CAUSE REQUIRED BY CHANCERY RULE 5(G), EFFECTIVE 09-01-90 - FILED

DOCKET ENTRIES

18	12/05/90	LTR. TO COUNSEL FROM V.C.HARTNETT DTD.11-30-90, RE: IT HAS BECOME NECESSARY TO CHANGE THE DATE & TIME WHICH IS 12-18-90, AT 11:00 A.M. IN WILMINGTON - FILED
19	12/10/90	LTR. TO V.C.HARTNETT FROM MARTIN P. TULLY DTD. 12-07-90 - FILED
20	12/10/90	AFFIDAVIT OF ROBERT D. HADL - FILED
21	12/10/90	STIP. & PROP. ORDER FOR PROTECTION PURSUANT TO COURT OF CHANCERY RULE 5(G) GOVERNING CONFIDENTIAL MATERIAL. ORDER RETURNED UNSIGNED ON 12-19-90
22	12/12/90	STIP. & PROTECTIVE ORDER PURSUANT TO COURT OF CHANCERY RULE 5(G) GOVERNING CONFIDENTIAL MATERIAL SIGNED BY V.C.HARTNETT DTD. 12-10-90 - FILED
23	12/13/90	LTR. TO V.C. HARTNETT FROM JOSEPH ROSENTHAL DTD. 12-13-90 - FILED
24	12/14/90	AMENDED STOCKHOLDERS' CLASS ACTION COMPLAINT - FILED
25	12/18/90	LTR. TO V.C. HARTNETT FROM JOSEPH ROSENTHAL DTD. 12-18-90 - FILED

DOCKET ENTRIES

26	12/18/90	STIP.& AGREEMENT OF COMPROMISE & SETTLEMENT - FILED
27	12/19/90	ORDER AS TO SETTLEMENT PROCEEDINGS SIGNED BY V.C. HARTNETT DTD. 12-18-90 (HEARING SCHEDULED 01-30-91, AT 11:00 A.M.)
28	12/28/90	LTR. TO COUNSEL FROM V.C. HARTNETT DTD. 12-19-90 RE: SETTLEMENT HEARING SET FOR 1-30-91 AT 11:00 A.M. IN WILMINGTON
29	01/14/91	NOTICE OF LODGING - FILED
30	01/14/91	DEPOSITION & EXHIBITS OF HOWARD P. ALLEN TAKEN 12-05-90, SIDNEY SHEINBERG TAKEN 12-06-90, LEW R. WASSERMAN TAKEN 12-06-90 (FILED UNDER SEAL) - FILED
31	01/14/91	DEPOSITIONS & EXHIBITS OF HOWARD P. ALLEN TAKEN 12-05-90, SIDNEY SHEINBERG TAKEN 12-06-90, LEW R. WASSERMAN TAKEN 12-06-90 (FILED UNDER SEAL) - FILED
32	01/14/91	DEPOSITIONS & EXHIBITS OF HOWARD P. ALLEN TAKEN 12-05-90, SIDNEY SHEINBERG TAKEN 12-06-90, LEW R. WASSERMAN TAKEN 12-06-90 (FILED UNDER SEAL) - FILED

DOCKET ENTRIES

33	01/14/91	DEPOSITIONS & EXHIBITS OF HOWARD P. ALLEN TAKEN 12-05-90, SIDNEY SHEINBERG TAKEN 12-06-90, LEW R. WASSERMAN TAKEN 12-06-90 (FILED UNDER SEAL) - FILED
34	01/23/91	NOTICE OF INTENT TO APPEAR & OBJECT (DAVID & ANDREW MINTON)
35	01/23/91	MEMO. OF OBJECTORS DAVID MINTON & ANDREW MINTON IN OPPOSITION TO THE PROPOSED SETTLEMENT - FILED
36	01/23/91	EXHIBITS TO MEMO. OF OBJECTORS DAVID MINTON & ANDREW MINTON IN OPPOSITION TO THE PROPOSED SETTLEMENT - FILED
37	01/28/91	CERTIFICATE OF SERVICE (JOSEPH ROSENTHAL) - FILED
38	01/28/91	LTR. TO V.C. HARTNETT FROM JOSEPH ROSENTHAL DTD. 01-28-91
39	01/28/91	AFFIDAVIT IN SUPPORT OF PROPOSED SETTLEMENT & AWARD OF ATTY FEES & EXPENSES (STEVEN G. SCHULMAN) - FILED
40	01/28/91	AFFIDAVIT OF HENRY A. BRACHTL - FILED
41	01/28/91	AFFIDAVIT OF ARTHUR S. AINSBERG - FILED

DOCKET ENTRIES

42	01/29/91	LTR. TO V.C. HARTNETT FROM MARTIN P. TULLY DTD. 01-29-91 - FILED
43	01/29/91	MEMO OF DEFS. IN SUPPORT OF PROPOSED SETTLEMENT & IN OPPOSITION TO OBJECTIONS - FILED
43	01/30/91	SETTLEMENT HEARING & ATTYS. FEES HELD BEFORE V.C. HARTNETT, DEC: RESERVED TIME: 11:08-1:01.
44	02/05/91	REPORTER'S TRANSCRIPT OF PROCEEDINGS PLTS' MOTION FOR SUMMARY JUDGMENT TAKEN 12-28-90 - FILED
45	02/05/91	MOTION & ORDER FOR ADMISSION PRO HAC VICE SIGNED BY V.C. HARNETT DTD. 01-30-91 (PAUL K. ROWE) - FILED
46	02/05/91	MOTION & ORDER FOR ADMISSION PRO HAC VICE SIGNED BY V.C. HARNETT DTD. 01-30-91 (STANLEY WOLFE) - FILED
47	02/05/91	MOTION & ORDER FOR ADMISSION PRO HAC VICE SIGNED BY V.C. HARNETT DTD. 01-30-91 (MARK C. GARDY) - FILED
48	02/05/91	MOTION & ORDER FOR ADMISSION PRO HAC VICE SIGNED BY V.C. HARNETT DTD. 01-30-91 (STEVEN G. SCHULMAN) - FILED

DOCKET ENTRIES

49	02/05/91		MOTION & ORDER FOR ADMISSION PRO HAC VICE SIGNED BY V.C. HARNETT DTD. 01-30-91 (MAY KAY VYSKOCIL) - FILED
50	02/05/91		AFFIDAVIT OF MAILING (PAUL K. ROWE) - FILED
51	02/05/91		PLTS. MEMO OF LAW IN SUPPORT OF PROPOSED SETTLEMENT, IN RESPONSE TO OBJECTION, & IN SUPPORT OF APPLICATION FOR ATTY. FEES AND EXPENSES - FILED
52	02/05/91		AFFIDAVIT OF CRAIG B. SMITH - FILED
53	02/19/91		TRANSCRIPT OF SETTLEMENT HEARING TAKEN 01-30-91 - FILED
53	03/05/91	50	STATUS LTR. FROM JOS. ROSENTHAL
54	04/25/91		OPINION FROM V.C. HARTNETT DTD.04-22-91, RE: DENIAL OF PROPOSED SETTLEMENT OF CLASS ACTION IT IS SO ORDERED - FILED
54	02/19/92	50	(3) STATUS LTRS.
55	10/22/92		STIP. & AGREEMENT OF COMPROMISE & SETTLEMENT - FILED
56	11/04/92		SCHEDULED 01-21-93, AT 12:00 NOON) - FILED

DOCKET ENTRIES

57	12/11/92	LTR. TO V.C. HARTNETT FROM CRAIG B. SMITH DTD. 12-11-92 - FILED
58	12/11/92	NOTICE OF INTENT TO APPEAR & OBJECT - FILED
59	12/11/92	NOTICE OF MOTION & PROP. ORDER FOR LEAVE TO TAKE DISCOVERY
59	12/24/92	RETURNED UNSIGNED 12-24-92 - FILED
60	12/16/92	NOTICE OF SERVICE (PLTS. FIRST DOCUMENT REQUEST DIRECTED TO OBJECTOR) - FILED
61	12/16/92	NOTICE OF DEPOSITION - FILED
62	12/17/92	WITHDRAWAL OF REQUEST TO TAKE DISCOVERY - FILED
63	12/30/92	NOTICE OF SERVICE OF OBJECTOR'S RESPONSE TO PLTS.' FIRST DOCUMENT REQUEST
64	12/31/92	[unintelligible] TO APPEAR AND OBJECTIONS TO PROPOSED SETTLEMENT
65	12/31/92	PAMELA MINTON DE RUIZ A/K/A PAMELA MANLEY'S NOTICE OF INTENT TO APPEAR AND OBJECT
66	12/31/92	MEMORANDUM OF MARION MINTON AS CUSTODIAN FOR KATHERINE MINTON
67	12/31/92	MEMORANDUM OF OBJECTOR PAMELA MINTON DE RUIZ IN OPPOSITION TO THE PROPOSED SETTLEMENT

DOCKET ENTRIES

68	12/31/92	AFFIDAVIT OF WILLIAM A. KRUPMAN
69	01/05/93	NOTICE OF SERVICE (PLTS. FIRST DOCUMENT REQUEST DIRECTED TO OBJECTOR PAMELA MINTON DE RUIZ) - FILED
70	01/05/93	NOTICE OF DEPOSITION - FILED
71	01/08/93	NOTICE OF SERVICE (PLTS. FIRST DOCUMENT REQUEST DIRECTED TO OBJECTOR WILLIAM KRUPMAN) - FILED
72	01/14/93	ISSUED SUBPOENA DUCES TECUM 1 COPY RET:
72	01/15/93	SERVED DEAN WITTER REYNOLDS, INC. LEAVING COPIES WITH BONNIE BORSA ON 01-14-93.
73	01/19/93	CERTIFICATE OF SERVICE (KEVIN GROSS) - FILED
74	01/19/93	PLTS. MEMO. IN SUPPORT OF REQUEST FOR AWARD OF ATTYS. FEES AND ALLOWANCE OF EXPENSES - FILED
75	01/19/93	PLTS. MEMO. IN SUPPORT OF PROPOSED SETTLEMENT - FILED
76	01/19/93	APPENDIX IN SUPPORT OF PLTS. APPLICATION FOR APPROVAL OF SETTLEMENT & AWARD OF ATTYS. FEES - FILED
77	01/19/93	DECLARATION OF STEVEN G. SCHULMAN - FILED

DOCKET ENTRIES

78	01/19/93	LTR. TO COUNSEL FROM V.C. HARTNETT DTD. 01-14-93, RE: EACH SIDE LIMITED ONE-HALF HOUR AT THE HEARING ON 01-21-93 - FILED
79	01/19/93	MEMO. OF DEFS. IN SUPPORT OF REVISED SETTLEMENT & IN OPPOSITION TO OBJECTIONS - FILED
80	01/19/93	AFFIDAVIT OF MARTIN P. TULLY - FILED
81	01/19/93	AFFIDAVIT OF ALEXANDER FAN - FILED
82	01/19/93	AFFIDAVIT OF MAILING (PAUL C. CURNIN) - FILED
83	01/19/93	NOTICE OF LODGING - FILED
84	01/19/93	TELEPHONIC DEPOSITION & EXHIBITS OF PAMELA MINTON DE RUIZ TAKEN ON 01-14-93 - FILED
85	01/19/93	DEPOSITION & EXHIBITS OF MARION MINTON TAKEN 01-06-93 - FILED
86	01/21/93	STIP. & PROP. ORDER FOR ADMISSION PRO HAC VICE (PAUL C. CURNIN)
86	01/21/93	ORDER SIGNED BY V.C. HARTNETT DTD. 01-21-93
87	01/21/93	MOTION & PROP. ORDER FOR ADMISSION PRO HAC VICE (JAMES H. ALLYN)

DOCKET ENTRIES

87	01/21/93	ORDER SIGNED BY V.C. HARTNETT DTD. 01-21-93
88	01/21/93	DECLARATION OF PETER R. DION KINDEM - FILED
89	01/21/93	AFFIDAVIT OF KATHLEEN M. MILLER - FILED
90	01/21/93	ERRATA SHEET ON DEPOSITION OF PAMELA MINTON DE RUIZ - FILED
91	01/20/93	LTR. TO V. C. HARTNETT FROM JOSEPH ROSENTHAL DTD. 01-19-93 - FILED
92	01/20/93	LTR. TO V. C. HARTNETT FROM JOSEPH ROSENTHAL DTD. 01-20-93 - FILED
92	92 01/21/93	SETTLEMENT HEARING/ATTYS. FEES HELD BEFORE V.C. HARTNETT, DEC: RESERVED, TIME: 12:05-1:29.
93	02/02/93	LTR. TO V.C. HARTNETT FROM JOSEPH ROSENTHAL DTD. 02-02-93 - FILED
94	02/02/93	NOTICE OF MOTION, MOTION & ORDER FOR APPROVAL TO FILE SUPPLEMENTAL MEMO.
94	02/02/93	ORDER RETURNED UNSIGNED [unintelligible] 08-93
95	02/02/93	SUPPLEMENTAL MEMO. IN SUPPORT OF REVISED SETTLEMENT & IN OPPOSITION TO OBJECTIONS - FILED

DOCKET ENTRIES

96	02/11/93	LTR. TO COUNSEL FROM V.C. HARTNETT DTD. 02-08-93, RE: PLTS. MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MEMO. THAT WAS FILED TEN DAYS AFTER THE HEARING HAD BEEN ADJOURNED IS NOT TIMELY & IS DENIED
97	02/12/93	TRANSCRIPT OF ARGUMENT ON PLTS. APPLICATION FOR APPROVAL OF SETTLEMENT & ATTYS/FEES TAKEN 01-21-93 - FILED
98	02/16/93	MEMO. OPINION FROM V.C. HARTNETT DTD. 02-12-93, RE: APPROVAL OF SETTLEMENT OF A CLASS ACTION, THE SETTLING PARTIES SHALL SUBMIT AMENDED PROPOSED ORDER - FILED
99	02/18/93	LTR. TO V.C. HARTNETT FROM JOSEPH ROSENTHAL DTD. 02-17-93
100	02/18/93	PROP. ORDER & FINAL JUDGMENT
100	02/18/93	ORDER RETURNED UNSIGNED ON 03-02-93
101	02/23/93	ORDER & FINAL JUDGMENT SIGNED BY V.C. HARTNETT 02-22-93
102	03/24/93	OBJECTORS DAVID MINTON'S & ANDREW MINTON'S APPLICATION FOR ATTYS. FEES - FILED

DOCKET ENTRIES

103	03/24/93	AFFIDAVIT OF CRAIG B. SMITH - FILED
104	03/31/93	LTR. TO REGISTER FROM CATHY L. HOWARD DTD. 03-29-93 - FILED
105	03/31/93	NOTICE OF APPEAL - FILED
106	04/12/93	OBJECTOR WILLIAM KRUPMAN'S APPLICATION FOR ATTORNEYS' FEES
107	04/12/93	AFFIDAVIT OF JAMES H. ALLYN
108	04/16/93	LTR. TO V.C. HARTNETT FROM KATHLEEN M. MILLER DTD. 04-16-93
109	04/16/93	NOTICE OF WITHDRAWAL OF MOTION (APPLICATION FOR ATTYS. FEES)
110	04/20/93	RECEIPT FROM MARGARET L. NAYLOR DTD. 04-13-93 - FILED
111	04/30/93	LTR. TO V.C. HARTNETT FROM JAMES H. ALLYN DTD. 04-27-93 - FILED
112	04/30/93	NOTICE OF WITHDRAWAL OF MOTION (APPLICATION FOR ATTYS. FEES FROM OBJECTOR WILLIAM A. KRUPMAN) - FILED
113	06/14/93	LTR. TO REGISTER FROM MARGARET L. NAYLOR DTD. 06-10-93 - FILED (APPELLANTS APPENDIX PAGES A-155 THROUGH A-159)

CORPORATE SECURITIES

John C. Coffee Jr.

Suspect Settlements in Securities Litigation

MUCH LIKE THE production of sausage and legislation, the settlement of securities litigation is a process that the high-minded are best advised not to examine too closely. For some time, commentators have recognized that serious principal/agent problems compromise the utility of shareholder litigation as a mechanism for deterring managerial misconduct.[1] Sometimes, the result can be collusive settlements in which low recoveries are exchanged for high plaintiffs' attorneys fees. But, while anecdotal evidence has always been available that corroborated this pattern, aggregate statistical data has generally been lacking. Now, however, it has begun to emerge in two recent studies by professors at Yale and Stanford Law Schools.[2] At the same time, greater judicial awareness of the potential for collusive settlements is also creeping into judicial opinions -- particularly in a string of recent cases that have explicitly abandoned the lodestar method of compensating the plaintiff's attorney in class and securities litigation.[3]

A Subtle Process

Collusion is, however, a complex phenomenon. It does not occur through naked exchanges of low recoveries for high fees, but by subtler processes that produce settlements not based on an action's litigation merits. Thus, for the litigator, the most interesting recent development in securities litigation may be the appearance of a new technique by which a collusive settlement -- that is, a non-adversarial settlement that maximizes the attorney's interests at the expense of the client's -- can be negotiated. Last month, the First Circuit Court of Appeals ruled in *Nottingham Partners v. Trans-Lux Corporation*[4] that a class action brought in federal court for securities law violations

was barred by the settlement of a later-filed state class action, even though the state class action did not (and could not) raise any securities law claims.[5]

Because the general release issued to the defendants in the state court settlement resulted in issue preclusion, the consequence was that no court, state or federal, could hear plaintiffs' claims of proxy fraud. The seeming paradox in *Nottingham Partners* is that a state court settlement can have preclusive effect despite the fact that the state court lacked subject matter jurisdiction over the claims thereby barred.

WHILE THE LEGAL issue of when one court has the power to approve the release of claims pending in another forum is complex, the practical message to plaintiffs' counsel is much simpler: weak derivative and class action claims that once would have been routinely dismissed by the Delaware Chancery Court now have an enhanced settlement value, because they can confer immunity with respect to pending federal securities class actions, which often would have a significant settlement value.

Ironically, the incentives for defendants are even clearer: never seek dismissal on the merits of a state class action if a companion federal class action raising related federal claims is possible, but instead reach a settlement in which the defendants are given a general release. If properly structured to fall within the *Nottingham Partners* precedent, such a release will preclude a federal class action raising federal securities claims.

This type of settlement can be described as "collusive" because the parties to the state court settlement are effectively depriving absent players -- the plaintiffs and their attorneys in the federal action -- of their day in court. The net result is effectively both a wealth transfer from the federal plaintiffs' attorneys to the state plaintiffs' attorneys and a reduction in the total recovery to the class (because

the state plaintiffs' attorneys are settling federal claims that they can never win, but can only settle, and should thus accept a lesser settlement than would the federal plaintiffs' attorneys).

Although it is still premature to predict that Rule 10b-5 actions will become an endangered species, the possible end result of *Nottingham Partners* will be that the already well-travelled road to the Delaware courts could become a six lane highway as plaintiffs and defendants rush to settle there before a federal court can stay them. This column will analyze the inter-jurisdictional race to the courthouse that *Nottingham Partners* opens up -- after first surveying the new empirical research on the settlement stage in securities litigation.

The Settlement Stage

To study shareholder litigation, Professor Roberta Romano of Yale Law School developed a sample of 535 public corporations, randomly chosen from the New York Stock Exchange, NASDAQ and from firms that delisted from those markets.[6] Studying these firms from 1966 through 1987, she identified 139 shareholder actions (both class actions and derivative suits) against 99 firms. While the incidence of litigation was low (NYSE firms could expect to be sued only once every 42 years on this basis), she found a substantial rise in litigation frequency during the 1980s.[7]

Her disposition data confirms earlier studies: plaintiffs rarely win, but most actions do settle. In fact, 65 percent of these actions settled, but only in two suits (1.5 percent of her total sample) did plaintiffs win a judgment. This translates into a 6 percent success rate for plaintiffs in terms of cases reaching court adjudication.[8] Shareholder settlements, she concluded, had two striking features: First, only half of all settlements involved a monetary recovery (46 of 83). Second, fee awards were paid to plaintiffs attorneys in over 90 percent of her cases (75 of 83), even though the plaintiffs received a monetary recovery in only

around half.[9] Indeed, in seven cases (8 percent), the only relief was plaintiff attorney's fees.[10]

A much criticized aspect of shareholder litigation has been the use of nonpecuniary settlements that afford no monetary relief to the shareholders or corporation, but which are used to justify an award of plaintiffs' attorneys fees. Critics have not infrequently suggested that such relief is often cosmetic and intended largely to hype the value of the settlement to justify a fee award.[11] In her sample, Professor Romano found 25 settlements affording structural relief, but only four of these had a monetary recovery.[12] She concluded that the value of such structural relief seemed "inconsequential," and "for the most part, board composition changes are cosmetic."[13] Meanwhile, attorneys fees and expenses, which were awarded in 75 cases in her study, averaged $908,808.[14]

Professor Romano's data suggest that the problem of collusion is considerably more pronounced in derivative actions than in class actions. The average recovery in derivative actions ($6,056,172) was about half that in class actions ($10,948,279), and a cash payout to shareholders occurred in only 21 percent of derivative actions, but in 67 percent of class actions.[15] Attorneys' fees were also lower in derivative actions ($394,771) than in class actions ($1,476,596),[16] which may reflect a judicial estimate of the lower value of the plaintiffs' attorneys' services in derivative suits.

Some may interpret this data to mean that derivative suits are largely frivolous. Others may see this data as showing that the procedural obstacles (in particular, the demand rule) have been placed so high in Delaware as to make even meritorious cases unwinnable. As a result, plaintiffs can hope only to achieve a small settlement. Yet, what both sides in this debate must recognize is that settlement (not adjudication) is the primary mode of resolution. Moreover, courts seem unable to play more than a weak monitoring role in supervising this stage, because settlements providing

little discernible benefit to the corporation or its shareholders frequently pass judicial muster.

The pressures to settle are particularly strong in derivative actions for two reasons: First, corporate law generally forbids the indemnification of litigation expenses if the corporate official is adjudicated to have breached a duty owed to the corporation, and D&O insurance contains exclusions for fraud or dishonesty which are more likely to be applicable if the action is resolved through a judgment than if it is settled.

Second, defense counsel maintains that a substantial cost differential favors plaintiff's attorneys, who can carry the action forward at low cost to themselves while imposing high costs on the defendants (and ultimately the corporation). On this theory, even a cosmetic settlement is in the corporation's best interests in order that it avoid the expenses to which the plaintiff can subject it.

The problem with this latter claim is the usual one with justifications for submitting to extortion: Once one is known not to resist, one becomes the target for more litigation. Indeed, the Romano study provides some suggestive, if inconclusive, support for this hypothesis: 29 percent of the firms that were sued in her study accounted for roughly half of all suits.[17] Moreover, those firms that were exposed to multiple suits did appear to settle at a marginally higher rate, and firms that were sued only once appear to have settled at a lower monetary recovery than those that were repetitively sued. Although these results were not statistically significant, the hypothesis that firms that settle easily are recurrently sued is at least consistent with this data.

Although the pressures to settle are more intense in the derivative suit context (and the value of the relief to the corporation justifying the award of attorneys' fees correspondingly more suspect), similar problems are evident in securities class actions. Indeed, a 1991 study of securities class actions by Professor Janet Cooper

Alexander of Stanford Law School casts even more doubt on whether the settlement process leads to outcomes that reflect the action's merits.[18]

Studying a specially selected sample of securities class actions involving computer-related initial public offerings during the first half of 1983, she discovered that (1) every single company in the industry whose stock declined in the six months following its initial public offering was sued, and (ii) the resulting cases uniformly settled for approximately one-quarter of the potential damages.[19] As a result, she concludes that "the strength of the plaintiffs' case on the merits did not appear to be a significant factor in determining the outcome" of the cases she studied.[20]

Why are the merits and the likely outcome at trial seemingly irrelevant to the settlement award? Professor Alexander points to a variety of factors: extremely risk-averse defendants, astronomic potential damages, the lodestar formula for awarding attorneys fees, and the existence of legal rules governing insurance and indemnification that encourage the parties to settle on any basis, rather than go to trial.

For example, a plaintiff's attorney who is compensated on a contingent hourly basis and who has invested a year or more in the preparation of an action has little, if any, economic reason to go to trial, when the potentially higher recovery to the class at trial will not substantially benefit him (because it will add only marginally to the hours that can be billed under the lodestar formula).

Professor Alexander's thesis is a provocative and radical one that contradicts the standard "law and economics" orthodoxy, which assumes that the parties to litigation settle based on their rational estimates of the expected outcome at trial.[21] Still, she may overstate. What she describes as the irrelevance of the merits may in fact be better described as the consequence of a unique statutory tilt toward the plaintiff in the Securities Act of 1933.

In effect, the statutory law has made the usual factual merits irrelevant. Because initial public offerings are governed by Section 11 of the Securities Act of 1933, which places the burden on most defendants to prove non-negligence and holds the issuer strictly liable for any material misstatement or omission, there may be few legitimate issues for a trial to resolve.

In this light, the governing formula she describes under which all securities class actions are settled at 25 percent of their requested damages may simply reflect defendants' judgment that these cases are unwinnable; the settlement then is largely derived by discounting the damage claim by the time value of money over the interval between the actual settlement date and the future point at which a trial would eventually award full damages to the plaintiffs.

As she acknowledges, the Securities Act of 1933 may give plaintiffs a virtual "put" for the period of the statute of limitations, enabling them to exchange their securities for their original purchase price. If so, the problem lies less with the settlement system than with the substantive law, itself, which in this unique area arguably tilts excessively in the direction of the plaintiff.

These two studies by Professors Romano and Cooper point in opposite directions. The Romano study suggests that stockholder litigation produces scant benefits for shareholders, while the Cooper study seemingly finds that securities class actions produce excessive and unjustified benefits. While defendants may agree with each of their critiques, they cannot both be right across the board: the problem cannot simultaneously be that stockholders get too little and too much. Still, both their stories have one plausible theme in common: the settlement process is not working.

Faces of Collusion

As traditionally understood, a collusive settlement was one in which the plaintiffs' attorneys sell out their clients in return for an overly generous fee award. The Romano study supports this traditional understanding of the problem. In contrast, the Cooper study suggests that defendants can also collude, by passing the costs of the settlement on to different absent parties: namely, the insurers, or the indemnifying corporation. Conceptually, the process is the same: the immediate participants maximize their interests at the expense of the absent parties.

Today, there may be a third form of collusion appearing on the horizon. Under it, the parties to one action (in state court) negotiate a non-merits based settlement in which at least one of defendants' primary goals is to preclude plaintiffs in a different case (in federal court). In short, one group of plaintiffs' attorneys effectively sell the legal claims raised by another group in order to enhance their own settlement at the expense of the absent group. This is the problem raised by *Nottingham Partners*.[22]

In March 1986, Trans-Lux issued a proxy statement whereby it sought to a adopt a series of "shark repellent" charter amendments. Shortly after these charter amendments were approved, Trans-Lux announced a sale of 24 of its movie theaters for $15 million.

Two years later, the plaintiffs in *Nottingham* brought suit in federal court, alleging that the non-disclosure of the impending sale violated Rule 14a-9 because its announcement in the proxy statement would have effectively put Trans-Lux on the auction block and caused shareholders to reject the proposed shark repellents.

Shortly thereafter, a parallel class action was filed in Delaware Chancery Court, asserting various violations of state law (including disclosure shortcomings in the 1986 proxy statement).[23] Within three months of its filing, a proposed settlement was reached in the Delaware action,

and, not surprisingly, it provided for a non-pecuniary settlement (but also for the payment of relatively modest plaintiffs' attorneys fees of $120,000).[24] The federal plaintiffs objected to the settlement, but the Delaware Chancery Court certified the class, overruled their objections, and approved the settlement.

On appeal, the federal plaintiffs also raised an important constitutional argument before the Delaware Supreme Court: that due process entitled them to an opportunity to opt out of the Delaware class action[25] In *Phillips Petroleum Co. v. Shutts*,[26] the Supreme Court held in 1985 that before a state court may bind an absent plaintiff in a class action "concerning a claim for money damages or similar relief at law," it must provide such a plaintiff "with an opportunity to remove himself from the class action by executing and returning an 'opt-out' or 'request for exclusion' form to the court.[27] Yet, on appeal, the Delaware Supreme Court distinguished *Shutts* by finding that the right to opt out did not apply to a class action that primarily sought equitable or injunctive relief, even if the action also sought monetary relief.[28] In such circumstances, it said, the Chancery Court could permit opting out as a discretionary matter, but was under no obligation to do so.[29]

When Trans-Lux thereafter pleaded the release given to it in the Delaware settlement as a defense to the federal action, the district court and later the First Circuit agreed with the Delaware Supreme Court's analysis.[30] Other decisions have similarly found that the right to opt out does not apply to class actions primarily seeking injunctive relief.[31] Yet, in sharp contrast to Delaware, the New York Court of Appeals has ruled this year that, although no right to opt out need be given from that portion of a class action seeking injunctive relief, a plaintiff must be permitted to opt out with respect to its claim for monetary relief.[32]

While New York's rule is constitutionally sounder, Delaware's approach poses a major hurdle for securities plaintiffs, because it is easily manipulated. Indeed, the facts

of the Trans-Lux litigation illustrate this potential for abuse in the artificiality of the equitable relief sought in that case.

Plaintiffs in the state action sought an injunction cancelling Trans-Lux's charter amendments two years after their adoption, when the issue of the possible sale of the company was long since moot. If this is sufficient to characterize a class action as primarily equitable in character, then even plaintiffs who have filed an earlier action for monetary damages in federal court are in trouble, because a Delaware action can always be brought for injunctive relief and will predictably settle quickly in order to be used as a barrier to the federal action.

For the federal plaintiffs in such a case, the exceedingly difficult procedural issue will be whether to seek the right to opt out in Delaware (which is discretionary with the Delaware court) or to avoid Delaware entirely and later claim in federal court that they were not adequately represented in the Delaware action.[33] But so long as the state court action involves an "identical operative factual predicate"[34] (which in securities cases will be the norm when both actions allege disclosure violations), it is now the law that claims over which a federal court has exclusive jurisdiction may be released in state court. At this point, at least until the Supreme Court clarifies *Shutts*, the prospect for collusion is clear and present.

Conclusion

Many courts have unthinkingly uttered the "familiar axiom that a bad settlement is almost always better than a good trial."[35] This column has contended that not only is this assertion shallow at best, but it is coming to mask a basic failure in securities litigation. The prospects for reform will be the focus of my next column.

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1. I have surveyed this literature elsewhere at length. See Coffee, *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 Colum. L. Rev. 669 (1986); Coffee, *The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigations*, 48 Law & Contemp. Problems 5. For more recent articles criticizing the settlement process and the adequacy of judicial approval of class and derivative actions as a safeguard, see Resnik, *Judging Consent*, 1987. U. Chi. Legal F. 43, 101 ("judges are ill-equipped to do much other than nod when the litigants join together and seek court approval"); Grosberg, *Class Actions and Client-Centered Decisionmaking*, 40 Syracuse L. Rev. 709, 739 (1989); Note, *Abuse in Plaintiff Class Action Settlements*, 84 Mich. L. Rev. 308 (1985).

2. See Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 Stan. L. Rev. 497 (1991); Romano, The Shareholder Suit: Litigation Without Foundation? (May 1990 forthcoming).

3. For recent cases rejecting the lodestar in favor of a return to a percentage-of-the-recovery system, see *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988); *Bebchick v. Washington Metro. Area Transit Comm.*, 805 F2d 396 (D.C. Cir. 1986); *In re Chrysler Motors Corp. Overnight Eval. Prog. Litig.*; 736 F. Supp. 1007 (E.D. Mo. 1990); *In re Activision Securities Litig.*, 723 F. Supp. 1373 (N.D. Cal. 1989); *Mashburn v. National Health Care Inc.*, 684 F. Supp. 679 (M.D. Ala. 1988). For a related decision seeking to preclude the parties from using a "clear sailing" agreement under which no challenge to plaintiffs' attorneys' fees will be made, see *Weinberger v. Great Northern Nekroosa Corp.*, 59 L.W. 2514 (1st Cir. Feb. 11, 1991).

4. 1991 U.S. App. LEXIS 1679 (1st Cir. Feb. 7, 1991).

5. Section 27 of the Securities Exchange Act of 1934 gives federal courts exclusive jurisdiction over "violations of this title or the rules and regulations thereunder," including, of course, Rule 10b-5.

6. See Romano, supra note 2.

7. Id. at 9-11. She attributes this increase in litigation frequency to the acquisition boom of the 1980s. Prior to 1980, she found only eight acquisition-related actions, but 46.5 such actions since then (or 40 percent of her total sample).

8. Id. at 18-21. Earlier empirical studies found a similar relationship between a high rate of settlements and few plaintiff victories. See Jones, *An Empirical Examination of the Resolution of Shareholder Derivative and Class Action Lawsuits, 1971-1978*, 60 Boston Univ. L. Rev. 542 (1980).

9. Romano, supra note 2, at 21.

10. *Id.*

11. See, *e.g.* Aronoff and Freeman, "Shareholder Derivative Actions -- A Continuing Balancing Effort," *Nat'l Law Journal* 28 (Nov. 16, 1981).

12. Romano, supra note 2, at 25.

13. *Id.*

14. *Id.* at 28. Where there was a monetary settlement fund, the attorneys' fees rose to $1,453,096, but where only structural relief or other nonpecuniary relief was obtained, they fell to $286,765. *Id.* This pattern strongly suggests that courts also doubted the value of this relief.

15. *Id.* at 22.

16. *Id.* at 28.

17. *Id.* at 12.

18. Alexander, supra note 2.

19. *Id.* at 500.

20. *Id.*

21. See, e.g., Priest & Klein, *The Selection of Disputes for Litigation*, 13 J. Legal Stud. 4 (1964); Cooter and Rubinfeld, *Economic Analysis of Legal Disputes and Their Resolution*, 27 J. Econ. Literature 1067 (1989).

22. See note 4 supra.

23. See *Nottingham Partners v. Dana*, 564 A.2d 1089, 1092 (Del. 1989).

24. *Id.* at 1093.

25. *Id.* at 1097-1101.

26. 472 U.S. 797 (1985).

27. *Id.* at 811-12.

28. 564 A.2d at 1098-1101.

29. *Id.* at 1101.

30. See *Nottingham Partners v. Trans-Lux Corporation*, supra note 4.

31. See, *e.g.*, *Penson v. Terminal Transp. Co.*, 634 F.2d 989, 994 (5th Cir. 1981). cf *Kincade v. General Tire & Rubber Co.*, 635 F.2d 501, 507 (5th Cir. 1981). Both decisions are prior to *Shutts*.

32. *In the Matter of Colt Industries Securities Litigation*, 1991 N.Y. LEXIS 1 (Jan. 8, 1991).

33. Under *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940), due process bars binding an absent class member unless the class representative provided adequate and full representation. When the objector appears in the forum to oppose the settlement, it will likely be bound by the forum court's determination of adequacy, but it remains uncertain whether it will be precluded from challenging adequacy in the federal action when it does not appear in the state action.

34. See, *e.g., National Super Spuds Inc. v. N.Y. Mercantile Exch.*, 660 F.2d 9 (2d Cir. 1981); *TBK Partners Ltd. v. Western Union Corp.*, 675 F.2d 456 (2d Cir. 1982).

35 *In re Warner Communications Sec. Litig.* 618 F. Supp. 735, 740 (S.D.N.Y 1985).

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE MCA, INC. SHAREHOLDERS LITIGATION	:	CONSOLIDATED C.A. NO. 11740

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PROPOSED SETTLEMENT

ROSENTHAL, MONHAIT, GROSS & GODDESS, P.A.
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* * *

[D.2.]

(a) It is unlikely that the Ninth Circuit will find that SEC Rules 10b-13 and 14d-10 provide a private right of action

The Federal District Court specifically held in the California Federal Actions that there is no private right of action under Rule 10b-13. *See* Amended Order Granting Motions to Dismiss, dated February 20, 1992, Appendix, Exh. E. Recent United States Supreme Court and Ninth Circuit authority have "drastically narrow[ed]" the bases upon which private rights of action will be implied and such rights are highly "disfavor[ed]."[10] Therefore, it is doubtful that the Federal Plaintiffs will succeed in reinstating their claims on appeal as the Federal District Court has already held that there is no private right of action under SEC Rule 10b-13 and the weight of authority appears to suggest that neither SEC Rule 10b-13 nor Rule 14d-10 authorizes a private right of action.

First, the plain language of Rule 10b-13 does not state or imply that such a right of action was intended and there is no compelling evidence that the SEC intended or even considered the possibility that such a private right of action be available under that Rule. In fact, under § 21(d)(1) of the Securities Exchange Act of 1934, the Rule is enforced by the SEC through injunctive actions, thereby further reinforcing that the SEC did not contemplate that a private remedy also be available.[11] Moreover, pursuant to Rule 10b-13(d), the

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[10] *Fidelity Fin. Corp. v. Federal Home Loan Bank*, 589 F. Supp. 885, 891-92 (N.D. Cal 1983), *aff'd*, 792 F.2d 1432 (9th Cir. 1986), *cert. denied*, 479 U.S. 1064 (1987); *accord California v. Sierra Club*, 451 U.S. 287, 297 (1981) ("[t]he federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide").

[11] *See Karahalios v. National Federation of Federal Employees, Local 1263*, 489 U.S. 527, 533 (1989); *Middlesex County Sewerage Authority v. National Sea Clammers Ass'n*, 453 U.S. 1, 15 (1981).

SEC is expressly permitted to exempt certain transactions from Rule 10b-13, which power is seemingly inconsistent with any implied private right of action. Therefore, it is unlikely that the Federal Plaintiffs will be able to carry their heavy burden of proving that, contrary to the Federal District Court's ruling, a private right of action exists under Rule 10b-13.[12]

Second, with respect to Rule 14d-10, in order for the Ninth Circuit to find that there is an implied private right of action thereunder, it must find that the Rule was promulgated pursuant to a section of the Securities Exchange Act of 1934 as to which Congress intended a private remedy to exist. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 213-14 (1976). In this regard, Rule 14d-10 was promulgated pursuant to §§ 14(d)(6) and 14(d)(7) of the Exchange Act of 1934 which, under current analysis, would also not appear to implicate a private right of action. It does not seem that the Federal Plaintiffs will be able to satisfy their heavy burden of demonstrating that Congress intended such a private remedy because, *inter alia*, the plain language of those sections does not confer rights upon private parties. To the contrary, §§ 14(d)(6) and 14(d)(7) simply note the requirements with which an entity making a tender offer must comply in order to lawfully make such an offer. Furthermore, the legislative history of those sections is

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[12] *See, e.g., Suter v. Artist M.*, 112 S. Ct. 1360, 1370 (1992)("the burden is on respondents [*i.e.*, the Federal Plaintiffs] to demonstrate that Congress intended to make a private remedy available. . ."); *In re Washington Public Power Supply System Securities Litig.*, 823 F.2d 1349, 1353 (9th Cir. 1987)("Plaintiffs must establish that Congress intended to provide for the private remedy which they ask us to imply. . ."). *See also Jablon v. Dean Witter & Co.*, 614 F.2d 677, 680 (9th Cir. 1980)(court declined to find private right of action under § 6(b) of the Securities Exchange Act of 1934)(quoting *Touche Ross & Co. v. Redington*, 442 U.S. 560, 569 (1979)). Given the stringent analysis that federal courts presently employ in implying private rights of action, the Second Circuit has recently expressed doubt that a private right of action exists under Rule 10b-13. *See Field v. Trump*, 850 F.2d 938, 946 n.3 (2d Cir. 1988), *cert. denied*, 489 U.S. 1012 (1989).

silent as to the creation of a private remedy thereunder. In addition, the statutory scheme into which Congress put §§ 14(d)(6) and (d)(7) expressly provides for injunctive enforcement by the SEC pursuant to § 21(d)(1) of the Securities Exchange Act of 1934 which, as with Rule 10b-13, is inconsistent with any implied private right of action under those sections. These facts would appear to suggest that the Ninth Circuit may well conclude that no private right of action exists under Rule 14d-10. *See Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 94 n.31 (1981).

* * *

[D.2.]

c. It is doubtful that the Ninth Circuit will overturn the Federal District Court's factual finding that Mr. Wasserman did not receive higher consideration than the other MCA shareholders in the Tender Offer

In its Second Amended Order, the Federal District Court concluded as follows:

> The value of the preferred stock received by Mr. Wasserman in exchange for his MCA common stock was *no greater than the $66 in cash paid pursuant to the Tender Offer*. At best the basis of the Wasserman MCA stock would be transferred to the stock of Matsushita received by Wasserman under § 368 (A)(1)(b) of the Internal Revenue Code.

Second Amended Order at 8 (emphasis added). The Federal District Court further noted that, contrary to the contentions of the Federal Plaintiffs, Wasserman did not in fact receive a tax-free transaction, but rather a transfer of tax basis to his newly- acquired preferred stock upon which he (or his heirs) will have to pay taxes when it is eventually redeemed. *Id.* at 19.

Thus, while the Federal District Court's conclusion that the Wasserman transaction did not occur during the Tender Offer period renders this point irrelevant, the Ninth Circuit is not likely to overturn the Federal District Court's finding, based on all of the evidence before it, *see, e.g.*, Declaration of Bradford Cornell dated Dec. 26, 1990, and filed in *Epstein v. MCA, et al.*, CV90-6451-R (C.D. Cal.), at ¶¶ 8, 10 (Appendix, Exh. F), that the applicable Rules were not violated as Wasserman did not receive higher consideration for his shares than the other MCA shareholders. Instead, he received illiquid preferred stock tailored to his "unique tax situation" whose lack of negotiability and relative risk, among other factors, more than sufficiently outweigh whatever tax benefits Wasserman may have derived. *See* Second Amended Order at 8, 11, 14-15; Appendix, Exh. F.

* * *

CONCLUSION

It is submitted that, for the reasons set forth above, this Court should approve the proposed Settlement.

Dated: January 19, 1993

Respectfully submitted,

ROSENTHAL, MONHAIT, GROSS & GODDESS, P.A.

By: /s/

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

- x

LAWRENCE EPSTEIN, on behalf of himself and all others similarly situated,

JDG (GHKx)

Plaintiff,

-v-

MCA, INC., MATSUSHITA ACQUISITION CORP., MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., MATSUSHITA HOLDING CORPORATION, and LEW R. WASSERMAN,

Defendants.

No: CV 90-6451

Class Action

- x

AFFIDAVIT OF ROGER W. KIRBY

ROGER W. KIRBY, being duly sworn, says:

1. I am a member of Messrs. Kaufman Malchman Kaufmann & Kirby, counsel for plaintiff Espstein herein, and submit this affidavit in support of our motion for summary judgment and concerning a possible Delaware release.

2. During the period December 3 to the morning of December 7, 1990, Jeff Squire of my firm and I variously spoke to lawyers working for two of the four lead counsel firms in the Delaware action. We were told in words or in substance by these lawyers that they were pessimistic about their prospects for prevailing in Delaware and that defendants had shown no inclination even to discuss settlement.

3. It was during this period that our firm first learned of the organization of the Delaware case. Prior to then we had never received notice of an organization of the Delaware action appointing Delaware lead counsel and not until Friday, December 7, 1990, did we obtain, after our request therefor, a copy of the order organizing that litigation. The order, Exhibit A hereto, expressly restricts lead counsels' authority to the Delaware litigation ("Plaintiffs' Co-Lead Counsel shall set policy for plaintiffs for prosecution of *this* [Delaware] litigation...." -- Exhibit A, ¶ 5) (emphasis supplied).

4. Around 6:00 p.m. on Friday, December 7, 1990, David Bershad of Milberg Weiss Bershad et al. called me to say that defendants had now agreed to settle the Delaware action but that our agreement to fold our federal action into the Delaware was a condition precedent. Later that night, I received by fax the letter that I have attached hereto as Exhibit B.

5. Over the weekend and on Monday, our firm researched the issues raised by that letter and further researched the issues raised in our pleadings in California. We concluded that Delaware counsel was clearly incorrect both in belittling the federal claims and in believing that they would be able to fashion a release in Delaware that could legally dispose of the federal claims. Accordingly, on Monday, December 10, 1990, I reported our conclusions to Bershad.

6. Also on December 10, 1990, I had a conversation with one of Matsushita's New York lawyers, Barry Ostrager, who said that perhaps I had not seen a so-called amendment to the Delaware action pleadings that purported to embrace our federal claims. He then sent along a letter dated December 4, 1990 that Bershad had sent to defendants' counsel. This letter is the same as appears at Exhibit 2 to the Rotstein Declaration that defendants submitted as part of their December 11, 1990 papers and Exhibit C hereto.

7. We have in the last several days obtained copies of the docket in the Delaware action. A copy of the most recent version of that document in our possession is attached to this affidavit as Exhibit D. That docket reveals that neither the

December 4, 1990 letter nor any other so-called amended complaint by plaintiffs has been made part of the record of that case. The docket further reveals that none of the Japanese entities is a party to the Delaware proceeding. Federal Document Retrieval advised me at 11:30 a.m. this morning that no additions to the attached document have been made.

8. We believe that the terms of the Delaware settlement are that some of the defensive mechanisms surrounding the WWOR equity stub to be issued to all MCA shareholders, including Wasserman, who tender their MCA shares will be dismantled, which, it is claimed, will enhance one value of the stub. To the extent that this settlement confers real value upon the class, it confers the most upon Wasserman individually.

9. We have asked defendants to provide us with the memorandum embodying the settlement (Exhibit E hereto) and have asked whether or not they have sought an exemption from the Securities and Exchange Commission for any aspect of the Matsushita tender offer (Exhibit F hereto). At around 6:00 p.m., on December 13, 1990 the aforesaid Ostrager telephoned me to say that settlement papers were being drafted, that I could not have a copy of the drafts, but would receive a copy of the final version. Defendants have not responded to our request for documents concerning an SEC exemption. Finally, an MCA press release issued December 12, 1990, states in part that: "The proposed [Delaware] settlement is conditioned upon dismissal of the remaining lawsuit [*i.e.*, the instant one] in federal district court in Los Angeles." That press release is Exhibit G hereto.

/s/

ROGER W. KIRBY

Sworn to before me this
14th day of December 1990

/s/

NOTARY PUBLIC